

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**AFFILIATED COMPUTER SERVICES, INC.**  
Employer

and

Case No. 29-RC-11709

**COMMUNICATIONS WORKERS OF AMERICA**  
Petitioner

**DECISION AND  
DIRECTION OF ELECTION**

Affiliated Computer Services, Inc., herein called the Employer, is engaged in providing transportation management and toll collection for the New York State Thruway Authority and other state and local entities. Communications Workers of America, herein called the Petitioner, filed a representation petition under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking an election among all full-time and regular part-time call center representatives, correspondence, enrollment tag clerks, and finance clerks employed at 1 Edgewater Plaza, Staten Island, New York, but **EXCLUDING** all executive, managerial, and confidential employees, guards and supervisors (including work leaders) under the Act.

A hearing was held before Ashok Bokde, a Hearing Officer of the National Labor Relations Board, herein the Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. The parties are in conflict with regard to the appropriateness of the unit sought by the Petitioner. As set forth in detail below, the

parties revised their unit positions a number of times over the course of the hearing, but did not summarize their unit positions at the close of hearing, or fully summarize their unit positions in their briefs. Piecing together the parties' shifting unit positions, it appears that the Petitioner is seeking the following unit:

All full-time and regular part-time customer service representatives ("CSRs") and clerks employed by the Employer in its tag processing department, violations department and correspondence department, all CSRs employed in the Employer's Staten Island walk-in center and the Staten Island call center, receptionists and facilities clerks employed in the facilities department, monitor clerks employed at the Staten Island call center, refund coordinators, NSF coordinators, charge back collections coordinators, reconciliation coordinators, deposit coordinators, accounts payable coordinators, and payroll coordinators, all employed by the Employer at its facility located at 1 Edgewater Plaza, Staten Island, New York, herein called the Staten Island facility, but **EXCLUDING** all other employees, managers, executives, supervisors as defined in Section 2(11) of the Act, confidential employees, guards, work leaders, trainers, correspondence department analysts, PA class mismatch transaction analysts, Port Authority violations bus analysts, Port Authority violations collections analysts, generic violations analysts, violations business account analysts, Port Authority accounts analysts, junior reciprocity analysts, report production leads, senior systems analysts, junior systems analysts, performance monitoring analysts, Vector system test administrators, junior LAN administrators, junior and senior quality assurance analysts, junior business analysts, workforce analysts, senior systems analysts, report production leads, senior LAN administrators, deposit clerks employed at the Employer's facilities located at Yonkers, Queens, Spring Valley, Albany, Grand Island and Syracuse, New York, and all other employees employed by the Employer in locations other than Staten Island.

The Employer's witness was Denise Cantos, the manager of operations for the New York E-Z Pass program, who provided almost 550 pages of testimony. The Petitioner's witness was Antoinette Maddocks, a customer service representative ("CSR") in the correspondence department, who testified briefly. Both parties examined and cross-examined the witnesses, and filed briefs.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the unit sought by the Petitioner is inappropriate, and that the smallest appropriate unit is the following:

All full-time and regular part-time customer service representatives (“CSRs”) and clerks employed by the Employer in its tag processing department, violations department and correspondence department, all CSRs employed in the Employer’s Staten Island walk-in center and the Staten Island call center, receptionists and facilities clerks employed in the facilities department, monitor clerks employed at the Staten Island call center, refund coordinators, NSF coordinators, charge back collections coordinators, reconciliation coordinators, deposit coordinators, accounts payable coordinators, payroll coordinators, junior reciprocity analysts, work leaders, correspondence department analysts, PA class mismatch transaction analysts, Port Authority violations bus analysts, Port Authority violations collections analysts, generic violations analysts, violations business account analysts, Port Authority accounts analysts, all employed by the Employer at its facility located at 1 Edgewater Plaza, Staten Island, New York, herein called the Staten Island facility, but **EXCLUDING** all other employees, managers, executives, supervisors as defined in Section 2(11) of the Act, confidential employees, guards, trainers, junior systems analysts, performance monitoring analysts, Vector system test administrators, junior LAN administrators, junior and senior quality assurance analysts, junior business analysts, workforce analysts, senior systems analysts, report production leads, senior LAN administrators, deposit clerks employed at the Employer’s facilities located at Yonkers, Queens, Spring Valley, Albany, Grand Island and Syracuse, New York, and all other employees employed by the Employer in locations other than Staten Island.

The facts and reasoning in support of my conclusions are set forth below. Unless otherwise indicated, all job classifications discussed in this decision are located in Staten Island.

### **Shifting Unit Positions of the Parties**

At the outset of the hearing, the Petitioner took the position that the unit set forth in its petition is an appropriate one. The Employer took the position that the petitioned-for unit would only be appropriate with the inclusion of the following job categories:

“All full-time and regular part-time call service representatives, correspondence,

violations, walk-in center, tag processing, enrollment tag clerks, finance clerks, finance department coordinators, facilities employees, quality assurance analysts, trainers, junior LAN administrator, report production leads, junior systems analysts, performance monitoring analysts, Vector system test administrators, violations analysts, junior business analysts, work leaders employed at 1 Edgewater Plaza, Staten Island, and all work leaders, CSRs, deposit clerks employed at six remote site walk-in centers located at Yonkers, Queens, Spring Valley, Albany, Grand Island and Syracuse, New York, and excluding executive, managerial, confidential employees, guards and supervisors as defined in the Act.”

As the hearing progressed, additional job classifications were added to the Employer’s proposed unit, including the correspondence department analysts, the PA class mismatch transaction analysts, and the junior reciprocity analysts. The violations analysts whose inclusion the Employer seeks are the Port Authority violations bus analysts, Port Authority violations collections analysts, generic violations analysts, violations business account analysts, and Port Authority accounts analysts.

During the first day of the hearing, the parties agreed that the unit should include the receptionists and facilities clerks in the facilities department, and the 29 clerks employed in the violations department, including the rental car and leasing agency (“RCLA”) clerk. The parties also agreed that the supervisor in the violations department should not be in the bargaining unit. However, the Petitioner continued to take the position that the analysts and work leaders in the violations department should be excluded from the bargaining unit, while the Employer took the opposite position.

During the second day of the hearing, the parties agreed that the unit should include the monitor clerk at the call center, and the following job classifications within the finance department: refund coordinators, NSF coordinators, charge back coordinators, charge back collections coordinators, reconciliation coordinators, deposit coordinators, accounts payable coordinators, and payroll coordinators. The Petitioner later clarified that it is only seeking to represent the deposit coordinators who work at the Employer's Staten Island facility. The parties also agreed that the workforce analyst at the call center should not be included in the bargaining unit.

On the third day of the hearing, the Petitioner further amended the petition to include customer service representatives ("CSRs") at the Staten Island walk-in center. The parties also reached agreement that the senior systems analyst, report production lead and senior LAN administrator should be excluded from the bargaining unit. However, the Employer reiterated its position that the following classifications should be included in the unit, while the Petitioner argued that they should be excluded: senior quality analyst, junior quality analyst, monitoring analyst,<sup>1</sup> Vector system test administrator, and junior LAN administrator.

The parties did not take positions on a number of job classifications set forth in the parties' exhibits, among them the workforce clerks in the call center, the QA reports analysts in the violations department, and the inventory control clerks, stock clerks, retail sales analysts, non-revenue/inventory analysts, and non-revenue/inventory clerks, in the operations management department.

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<sup>1</sup> This is probably a reference to the performance monitoring analysts, who were among the job classifications in the Employer's proposed unit on the first day of hearing.

At the close of the hearing, the Petitioner indicated that it was prepared to proceed to an election in any alternative unit found appropriate by the Regional Director or the Board.

In its brief, the Petitioner provides a description of the bargaining unit that it is seeking. However, the unit description in the brief does not specifically set forth all of the job classifications that the Petitioner sought during the hearing. Further, the unit description in the brief contains a list of exclusions, which does not specifically set forth all of the job classifications that were in dispute during the hearing. Since no reason is given for these omissions, I will assume that they are inadvertent, and I will rely on the representations made at the hearing. Although the Petitioner's brief states that it is seeking a facility-wide unit encompassing the entire Staten Island facility, exclusive of managers and supervisors, it does not state that it is seeking to include the various job classifications on which the parties did not take positions during the hearing.

All job classifications discussed in this decision are located in Staten Island unless otherwise indicated.

### **FACTS**

Cantos testified that the Employer is an international company that performs customer service, account maintenance, administrative and technical services for various government entities. Among the Employer's clients are three toll authorities, the MTA Bridges and Tunnels Authority ("MTA"), the Port Authority of New York and New Jersey ("PA"), and the New York State Thruway Authority ("TA"), for which the Employer administers the New York E-Z Pass program. The New York E-Z Pass program is an electronic toll program, involving electronic devices or "tags" placed in

vehicles, commonly referred to as E-Z passes. The tags transmit and receive electronic signals when the vehicles pass through toll facilities, and customers' accounts are debited electronically. There are two types of customer accounts: private accounts, which are usually limited to four tags, and business accounts such as large limousine or trucking companies, which can have up to 10,000 tags. The MTA, PA, and TA, also referred to in the record as "the client(s)" or "the agenc(ies)," are part of the Inter-Agency Group of Toll Authorities ("IAG"), consisting of toll authorities along the eastern seaboard with reciprocal relationships regarding electronic toll collection.

In administering the New York E-Z Pass program, the Employer operates seven walk-in centers, also referred to as "stores." These include four downstate walk-in centers, located in Staten Island, Yonkers, Queens, and Spring Valley, New York, and three upstate walk-in centers, located in Syracuse, Albany, and Grand Island, New York. Cantos testified that each of these walk-in centers performs customer service functions for all three toll authorities for which the Employer administers the New York E-Z Pass program.

In addition, the Employer's Staten Island facility, referred to as the "main processing center," performs centralized functions such as customer correspondence and financial reconciliation. The Employer occupies the first, third and fifth floors of the Staten Island facility.

The program manager for the New York E-Z Pass program is Annemarie Bressler. Reporting to Bressler are the managers of eight overall areas: operations, call center, violations, finance, quality assurance, information technology ("IT"), local area network ("LAN"), and human resources ("HR"). Reporting to Cantos, the operations

manager, are the assistant operations managers for the tag processing department, the correspondence department, and the walk-in centers, as well as the senior supervisor for the facilities department.

### **SUPERIOR STAFFING**

Cantos testified that the Employer hires all front-line, hourly employees through Superior Staffing, a national temporary agency. This includes customer service representatives (“CSRs”) in the call center, walk-in centers, and correspondence department, as well as the two receptionists in the facilities department. Employees hired through Superior Staffing remain employees of Superior Staffing for their first 90 days of working for the Employer, and their performance, customer service skills, team work and attendance are reviewed after 90 days to determine whether they can “convert” to being employees of the Employer. Cantos testified that a conversion recommendation form, which is similar to a performance appraisal form, is used by the supervisors to assess the employee’s performance over his first 90 days. The assistant managers then review the form, and make recommendations to Cantos, who has final approval.

### **TRAINING**

The Employer’s CSRs receive informal training from their supervisors and co-workers, and are given a new employee orientation after they “convert” to being employees of the Employer. In addition, the training department provides refresher training on business rules and policies.

Cantos testified that some remote walk-in center supervisors and staff have come to the main processing center in Staten Island for training, and that this had occurred within the last 30 days. In addition, the training department has traveled to the various



walk-in centers to provide training. Cantos stated that the walk-in center CSRs attend new hire training in Staten Island, if practical, and if it is not practical, the training is done at the walk-in center.

### **THE EMPLOYER'S COMPUTER SYSTEM**

Cantos testified that most employees who work for the New York E-Z Pass program use an on-line software package known as "Vector," which is used for inputting, updating, storing, and accessing customer information, and is accessible to employees in all of the facilities that administer the New York E-Z Pass program. Most employees sit at work stations with computers.

In addition, the Employer uses Actuate, a software package which generates reports.

### **DAILY SETTLEMENT SHEET**

Cantos testified that all employees who perform monetary transactions and financial adjustments maintain a daily settlement sheet. At the end of the day the daily settlement sheet, together with any credit card receipts, checks, or cash received, are compared with what was entered into the Vector system. A payment detail report ("PDR") generated by the Vector system is utilized in analyzing any disparities.

After the settlement sheets are completed, they are first reviewed by either the employee's work leader or supervisor, and then by employees in the finance department.

### **WALK-IN CENTERS**

At the Employer's seven walk-in centers, a customer can open an account, return or request E-Z Pass tags, submit address changes, payment method changes or vehicle changes, and make payments in person. In addition, customers can pay their tolls and

finest in connection with violations, which occur when a tag is not read, or when a customer's account balance is too low to cover the toll. CSRs at the walk-in centers process payments, receive and distribute tags, and update customer information in the Vector system. If a tag is returned at a walk-in center, a CSR deactivates the tag in the computer system, and the tag is then recorded and sent to the tag processing department in Staten Island.

At the walk-in centers, customers can also dispute violations and other matters. Some disputes can be resolved immediately, by the CSRs at the walk-in centers, and some disputes are routed to either the violations department or the correspondence department in Staten Island. CSRs at the walk-in centers enter information into Vector regarding customer requests that have to be forwarded to other departments, and these requests can be "electronically queued" to those other departments. The walk-in center CSRs' job functions include money-counting, and utilizing counterfeit machines to check for counterfeit bills.

Cantos testified that the walk-in center in Staten Island has a card access door for employees to enter the area. She stated that other CSRs do not have the ability to enter through this door, because "cash and payments are being performed there." The Employer's security system allows varying levels of access to various job classifications, with restrictions on employee badges based on the security of Agency assets such as tags or funds. Higher levels of access are given to managers and supervisors.

The walk-in center CSRs are required to have a high school diploma, a customer service background, retail and/or cash-handling experience, and English as their first language.

## **TAG PROCESSING DEPARTMENT**

Cantos testified that the tag processing department in Staten Island consists of a supervisor, two work leaders whose unit placement is disputed, and 16 tag processing CSRs. Tags are routed to the department after being returned in the mail, or in person at one of the Employer's seven walk-in centers. The tag processing CSRs make the appropriate changes in the Vector system, inspect the condition of the tag to see if it has been damaged (which results in a fee), correspond with the customer if there are any questions, count and record the tags, and reconcile this count with the count previously conducted by the walk-in centers when they received the tags. If there is correspondence enclosed with the tag, requesting that the account be closed, there is a "hand off" to the correspondence department. CSRs in the tag processing department also use Vector to process fees for tags retained from customers at toll plazas, and to credit accounts for lost and stolen fees. Their financial transactions are recorded on their settlement sheets, reconciled to the Vector system, and reviewed by their work leader.

According to Cantos, CSRs in the tag processing department do not have minimum educational requirements. The training they receive is primarily from their peers and supervisor.

Cantos testified that "many" CSRs in the tag processing department transferred there from the call center or the correspondence department. She stated that CSRs in the tag processing department have filled in in the facilities department, and have participated in overtime work for the correspondence department and violations department.

## **CORRESPONDENCE DEPARTMENT**

Cantos testified that the correspondence department consists of an assistant operations manager, two supervisors, a correspondence department analyst, two PA class mismatch transaction analysts, seven work leaders, and 56 CSRs. The parties are in conflict with respect to the inclusion of the correspondence department analyst, the PA class mismatch transactions analysts, and the work leaders.

The main duties of the correspondence department CSRs consist of closing accounts, responding to customer inquiries and disputes, performing account adjustments resulting from the resolution of disputes, and performing updates, such as changes of address or changes from paper statements to e-mail statements. The correspondence department receives written inquiries by mail or fax or through the employer's web site, or through "customer unresolved inquiries" from the call center, walk-in centers or tag processing department. The correspondence department CSRs use Vector, and fill out settlement sheets. Some CSRs in the correspondence department sort and collate the correspondence. The business correspondence department is a subset within the correspondence department, of employees who predominantly deal with business EZ-Pass accounts but otherwise perform the same functions as other correspondence department CSRs.

In addition, Cantos stated that there is also a group of CSRs performing quality review in the correspondence department. These individuals review the work of other CSRs, audit the day's work, "record their findings, and then sometimes make recommendations on a document that they would maintain on a daily basis." However, Cantos later clarified that all or most of these CSRs are currently spending all or most of their time on general CSR work, because of the necessity of getting the work done. It is

not clear from the record how much of their time is spent reviewing the work of other CSRs.

Cantos testified that the CSRs in the correspondence department do not have any special educational requirements. Most correspondence department CSRs have previous experience as CSRs at the call center. Cantos testified that both the correspondence and violations departments sometimes have spikes in the volume of correspondence, and any CSR can participate on an overtime basis to help with the extra volume. Conversely, when there is a heavy call volume in the call center, the CSRs in the correspondence department sometimes help the call center CSRs with their work.

#### **Correspondence Department Analysts**

Cantos testified that there is currently just one correspondence department analyst, who reports to the assistant operations manager of correspondence. Cantos testified that the correspondence department analyst ensures the integrity of outgoing mail generated both internally, and through the outside mail house. The mail house is a company called Global Document Solutions, which does all of the fulfillment and mailing of all outbound customer correspondence. The correspondence department analyst reviews and approves sample letters sent by the mail house. For example, when the mail house generates customer statements, the correspondence department analyst checks over the file of outbound statements that will be generated, and gives his approval to the mail house. In addition, the correspondence department analyst works with the business analyst to review the accuracy of letters with instructions to customers on using the Employer's voice recognition system and web site. Most of the correspondence department analyst's time is spent validating mail house work, identifying repeating

problems and making recommendations. For example, the correspondence department analyst might be concerned about the physical appearance of a letter.

The correspondence department analyst also reconciles the quantities of transactions, and reconciles the postage costs to the number of “letters that were supposed to be in a given file.” The correspondence department analyst uses the Vector system, and prepares reports summarizing the total number of each type of correspondence. He “maintains reports to reconcile the mail house jobs, and memorialize that they were valid files, and reconcile back to accounts anticipated.”

In addition, the correspondence department analyst has the ability to obtain older, archival data through a system supported by the mail house. This archival material may be requested by either the tolling authorities with which the Employer contracts, or by the correspondence department, which may need it to resolve a customer dispute. The correspondence department analyst also handles customer escalations from the correspondence department CSRs.

Although the official job description states that the correspondence department analyst “identif[ies] business trends through data analysis, making formal recommendations for corrective and/or preventative action,” Cantos termed this an “overstatement.” The correspondence department analyst does not attend management meetings.

The correspondence department analyst works in an administrative area on the third floor of the Staten Island facility, in the main processing center, because there is insufficient space in the correspondence department.

The correspondence department analyst does not have a Bachelor's degree, but possesses equivalent work experience, having been a CSR in a number of different departments. Cantos testified that the only requirement for being a correspondence department analyst is EZ-Pass experience. There are no special educational requirements.

If the correspondence department analyst is absent, the functions of this position are performed by "two or three CSRs" in the correspondence department who have been trained to perform the correspondence department analyst's job duties.

#### **PA Class Mismatch Transaction Analyst**

There are two individuals in this job category, reporting to the assistant operations manager of correspondence. A "class mismatch condition" is created when customers use an E-Z Pass programmed for a particular vehicle type, such as an automobile, while driving a different vehicle type, such as a tractor-trailer, requiring a different and higher toll. The PA class mismatch transaction analysts review customers' accounts and perform "outreach" to them, to try to have them replace their tags and pay their tolls. They keep a log of accounts they contacted, and perform a settlement at the end of the day.

In addition to using the same Vector system, telephone system, and reports as the CSRs, the PA class mismatch transaction analysts have access to a Port Authority database that provides images of vehicles, to determine whether there is a mismatch before reaching out to customers.

The PA class mismatch transaction analysts spend about 25% of their day performing the same general customer service and correspondence functions as

correspondence department CSRs, mostly with respect to non-revenue customers such as police and fire departments. In addition, they are assigned to perform general correspondence functions when there is a backlog in their department. When the PA class mismatch transaction analysts take vacations, they usually fill in for each other.

According to Cantos, there are no educational requirements for being PA class mismatch transaction analysts. The only requirement is experience within the program. She stated that the PA class mismatch transaction analysts do not attend management meetings.

### **CALL CENTER**

Cantos testified that there are two call centers, at the Staten Island and Spring Valley facilities, but that the Spring Valley call center is about to be eliminated and consolidated with the Staten Island call center. She stated that most Spring Valley call center employees have found other opportunities within the company. However, the walk-in center at Spring Valley (as distinguished from the call center at that location) will remain operational.

The organizational chart for the Employer's call center indicates that both the Staten Island and Spring Valley call centers are staffed by supervisors, work leaders, clerks (also referred to as CSRs), and call center monitors, all reporting to an assistant manager and manager. Also on the organizational chart are a workforce clerk reporting to a workforce analyst, who reports to the call center manager. Finally, Cantos testified that there are three trainers in the training department, which department comes under the umbrella of the call center.



The parties agree on the inclusion of the CSRs and call center monitors, and the exclusion of the workforce analyst. They disagree as to whether the trainers, the Spring Valley call center staff, and the work leaders at the Staten Island facility, should be included in the unit, as contended by the Employer, or excluded, as contended by the Petitioner. The parties did not take positions on whether the workforce clerk should be included in the bargaining unit.

### **Call Center CSRs**

The call center CSRs receive telephone calls through an “800” number, which provides an automated response system with menu selections. If the caller presses “0” to speak to a human being, an automated call distributor (“ACD”) identifies the next available CSR. The official job description for call center CSRs indicates that they assist customers with questions regarding account maintenance, violations, tolls, and billing, as well as researching and resolving problems. Cantos testified that the call center CSRs use the Vector system, and that their job functions include submitting unresolved customer inquiries to other departments. The call center CSRs generally do not fill out settlement sheets, except for one group that handles financial transactions such as deactivating tags.

Cantos testified that the call center sometimes needs additional staffing, and a CSR from the Staten Island walk-in center could participate in overtime work to help with the extra volume. When the call center is inadequately staffed, or there is a high volume of telephone calls, CSRs in the correspondence department or the violations correspondence department may also take call center calls. Conversely, the call center CSRs often help with the backlog in the correspondence and violations correspondence

departments. The most recent occurrence of this was within eight weeks prior to the hearing.

### **Call Center Monitor Clerks**

According to the official job description for call center monitor clerks, their function is to monitor call flow and CSR performance. They report telephone systems problems, observe the CSRs, and “listen for ... courtesy, knowledge, accuracy, script compliance and efficiency and be prepared to escalate poor or unsatisfactory performance to supervisors.” They are required to have a “comprehensive understanding of Vector Account Maintenance, Avaya CMS, and IEX,” as well as Microsoft Word and Excel.

### **Trainers**

Cantos testified that there are three trainers at the Staten Island facility, who are assigned to the call center. They report to the training supervisor, who reports to the call center assistant manager.

The trainers use Microsoft Office to put together training documents, such as tests, work sheets, and modules. Although most of the training they conduct is of the call center employees, they provide refresher training programs to a broader range of departments. For example, they provide an “angry customer” training to CSRs across the program, and are currently providing all departments with training on the latest version of the Vector software. The trainers provide “feedback” on the employees they train, and the employees being trained also evaluate the trainers.

Cantos testified that the trainers began their careers as CSRs. For example, one of the trainers was first a CSR, then a work leader, and then a trainer. The trainers are

selected by the call center managers, on the basis of their presentation skills and enthusiasm.

Cantos testified that when a trainer is absent, either another trainer or the training supervisor fills in.

### **VIOLATIONS CORRESPONDENCE DEPARTMENT**

Cantos testified that the violations correspondence department, also referred to as the violations department, consists of a violations manager, a supervisor, three work leaders, six violations analysts, and 29 violations correspondence CSRs. The violations CSRs are also referred to as clerks. Included among the violations correspondence CSRs is one rental car leasing agency (“RCLA”) clerk. The parties are in dispute as to the inclusion of the work leaders and six violations analysts in the bargaining unit. They agree that the CSRs should be included, and the manager and supervisor excluded.

### **CSRs in Violations Department**

Cantos testified that violations occur when a tag is not read, or when a customer’s account balance is too low to cover the toll. Each violation carries a \$25 fee. The CSRs correspond with customers concerning such violations, and resolve disputes when customers contest the violation. The CSRs research why the violation occurred, and refer to the agency business rules and customer service policies to determine how the dispute should be resolved. In some cases, when there are repeat violations, the violations correspondence department may find out that the tag is not mounted properly, or that it is not working properly and has to be replaced. In addition, as part of a “last chance” program, the violations department CSRs have negotiated settlements with customers

owing money on violations, who are seeking to avoid having their accounts sent to collections agencies.

The violations correspondence department is the only department with the ability to dismiss a violation.

The RCLA clerk is a CSR who handles rental car issues. When a rental car company provides the Employer with the name of the individual who was renting the vehicle at the time of a violation, the RCLA clerk keys a “transfer of responsibility” into the Vector system. This has the effect of dismissing the violation against the rental car company, but generating a new violation for the individual, who is then notified.

Like other CSRs, the CSRs in the violations correspondence department fill out settlement sheets and reports summarizing the transactions that they perform. Cantos testified that there are no educational requirements for being a CSR in the violations correspondence department.

Cantos testified that the violations correspondence department is a high volume area, and there have been “many situations where correspondence CSRs, call center CSRs, walk-in center CSRs have participated in working off very, very large backlogs of violation correspondence.” This has occurred both during normal working hours, and through overtime opportunities for all CSRs. Conversely, the violations department can cover inbound call center calls “in a pinch.” In addition, an unspecified number of CSRs have permanently transferred from the correspondence and tag processing departments to the violations department.

#### **VIOLATIONS CORRESPONDENCE DEPARTMENT ANALYSTS**

Cantos testified that there is one Port Authority violations bus analyst, one Port Authority violations collections analyst, two generic violations analysts, one violations business account analyst, and one Port Authority accounts analyst. She provided detailed testimony regarding the first three out of these five job classifications, as set forth under the headings below. All violations department analysts use the Vector system, and receive escalated calls from the CSRs. All violations department analysts report to the violations manager.

The various violations analysts sit in the same area as the violations department CSRs, and can help to cover the telephones in the violations department during violations initiatives, such as the “last chance initiative.” Also, the violations analysts support the violations department by performing violations correspondence processing duties when there are backlogs. Cantos testified that the violations department has gone into significant backlog three times in the last 18 months. In addition, when there is an insufficient volume of work to keep the Port Authority bus analysts busy, they perform general violations correspondence duties.

#### **Port Authority Violations Bus Analyst**

Cantos testified that the Port Authority bus analyst performs customer service and account maintenance functions associated with violations by bus companies. Violations occur if the tag is not read, or is malfunctioning, or if the driver forgot to put the tag on the bus. The license plates are photographed at the toll plaza to find the registrant, thus providing the identity of the customer to whom to send the bill for the toll, as well as the fee for the violation. If the bus company that owns the bus leased the bus to another company at the time the violation occurred, it informs the Employer, and the Port

Authority bus analyst performs a “transfer of responsibility” transaction in the Vector system. The “transfer of responsibility” transaction dismisses the violation against the company that owns the bus, and moves the obligation to the company that leased the bus, creating a notice of violation that goes to the company that leased the bus. As previously described above, the same “transfer of responsibility” transaction is performed by the RCLA clerk in the violations department, for individuals who rent cars. The parties agreed to include the RCLA clerk in the bargaining unit.

Cantos testified that if the Port Authority bus analyst is absent for an extended period of time, the violations manager would select another violations analyst, or a violations correspondence CSR, to fill in for her. However, Cantos could not provide a specific example, because she is not involved in the day-to-day running of the violations department.

The Port Authority bus analyst’s performance review is done by the violations manager, with “input” from the violations supervisor. No educational requirements or special skills are required for the position, other than an E-Z Pass background. The current Port Authority bus analyst, Cherise Brown, was previously a violations correspondence CSR, and then a trainer.

#### **Port Authority Violations Collections Analyst**

Cantos testified that the Port Authority violations collections analyst, also referred to as the Port Authority violations analyst, prepares the documentation to support legal proceedings against violators. This documentation includes screen prints of violations over five years old or over \$1,000. The requirements for this position include experience as a violations CSR, and the ability and willingness to go to the courts of New York and

New Jersey with supporting documentation to help represent the Port Authority in legal proceedings. The current Port Authority violations collections analyst was previously a violations department CSR. He or she reports directly to the violations department manager.

The job description for the Port Authority violations collections analyst states that a Bachelor's degree or equivalent work experience is required for the position. Cantos testified that the individual currently holding the position does not have a degree, but was promoted on the basis of his or her extensive customer service experience in the violations department.

#### **Generic Violations Analysts**

Cantos testified that the Generic violations analysts receives escalated calls from the CSRs in the violations department, for example, if the number of violations, or the dollar value of the violations, exceeds a "certain" number. In addition, they act as liaisons with the toll authorities on complicated violations issues. When asked for specific examples of such complicated violations issues, Cantos referred to "habitual problems," "chronic problems that are endemic to the industry," "certain types of vehicles," and "certain conditions within an account."

The Generic violations analysts assist in reviewing the integrity of the violation notices created by the mail house. In addition, they help to support the violations department by running "warning reports," such as the "violation citation detail report," so that the CSRs can do their jobs. In running the reports on the computer, the analyst types in the parameters, such as the time period that the report will cover. The reports themselves are created by "report professionals."

Cantos testified that both of the Generic violations analysts had previous experience as CSRs in the violations department. Although the official job description requires a Bachelor's degree, neither of the Generic violations analysts has a degree.

Cantos testified that when the generic violations analysts are on vacation, different portions of their job responsibilities could be assigned to anyone in the department, including work leaders, supervisors, analysts, or CSRs. She stated that employees are cross-trained with the violations department. Conversely, the generic violations analysts fill in for the other analysts in the violations department, as well as assisting CSRs in the department with the violations correspondence backlog. She stated that this has occurred within the last 8 weeks.

Cantos testified that the generic violations analysts do not supervise employees, or fill in for the managers.

#### **Violations Business Account Analyst and Port Authority Accounts Analyst**

Cantos stated that there is one violations business account analyst and one Port Authority accounts analyst. There is no further record evidence that specifically pertains to these two job classifications. However, as set forth above, Cantos provided general testimony pertaining to all violations department analysts.

#### **FINANCE DEPARTMENT**

On the second day of the hearing, both parties agreed to include in the unit the following job classifications within the finance department: refund coordinators, NSF coordinators, charge back collections coordinators, chargeback coordinators, reconciliation coordinators, deposit coordinators, accounts payable coordinators, and payroll coordinators. The parties are in dispute with regard to the inclusion of the junior



reciprocity analysts, and the deposit coordinators and deposit clerks at locations other than Staten Island.

### **NSF Coordinators**

Cantos testified that the NSF coordinators “interact with customers because they bounce checks.” After receiving notification from the bank that a customer’s check has bounced, the NSF coordinators look at the history of the account to determine whether this has happened before. If so, NSF coordinators perform an account update, reverse the check out of the account, impose a penalty, send correspondence to the customer, and “then potential[ly] flagging the check because once you bounce a check on us we won’t take a check again.”

### **Refund Coordinators**

When the correspondence department closes an account, and there is a balance remaining in the account, the refund is handled by the refund coordinators, also referred to as refund clerks. The refund coordinators first review the correspondence department’s work, to make sure that the paperwork was filled out correctly, and then they follow various business rules when issuing the refund. For example, the refund can only be made to the person whose name is on the account, and a refund cannot be made if there are still open violations on the account.

### **Charge Back Coordinators**

The charge back coordinators handle situations where customers who pay by credit card dispute the frequency or amount of their credit card charges, and submit a charge back to their credit card company. After the credit card company communicates this to the Employer, the charge back coordinators research the account to determine

whether the charge back is valid, and communicate with the customer. If the charge back is not valid, and the customer does not reverse the charge back, the Employer can withdraw money out of the customer's account.

### **Payroll Coordinators**

Cantos testified that the finance department "handles payroll coordination."

### **Deposit Coordinators and Deposit Clerks**

Cantos testified that there are four deposit coordinators at the Staten Island facility, one deposit coordinator at the Queens facility, and one deposit coordinator at the Yonkers facility. In addition, the Grand Island, Albany, and Spring Valley facilities each have one deposit clerk. There is no deposit clerk at the Syracuse facility, where the deposit is handled by a work leader or supervisor.

The deposit coordinators and deposit clerks reconcile financial transactions at their respective locations, in preparation for the deposit. This reconciliation process involves searching for errors, to ensure the integrity of the financial transactions that were processed. The deposit coordinators and deposit clerks then prepare separate deposits for each of the tolling authorities. A program-wide reconciliation, combining the deposits for all of the different sites, is then conducted by the central finance department in Staten Island.

The deposit coordinators at the Staten Island, Yonkers and Queens facilities are part of the reconciliation department, which is part of the finance department, and they report to the reconciliation supervisor. By contrast, the three upstate deposit clerks report directly to an on-site supervisor at their respective upstate locations. Because the

upstate facilities are small, the reconciliation and deposit process can be completed quickly, and the upstate deposit clerks have other customer service responsibilities.

Cantos testified that when the Queens deposit coordinator is absent, the Yonkers deposit coordinator fills in. When asked what happens when a deposit coordinator in Staten Island is on vacation or out sick, Cantos replied, "The finance reconciliation supervisor will reassign one of the other, one of the six [deposit coordinators], that's why they report to the financial reconciliation, the reconciliation supervisor so that she has jurisdiction over all six of them. So, she can pull somebody from Queens or Yonkers to back-fill Staten Island or vice versa, to do the deposit." Cantos testified that this is a frequent occurrence, but when asked for specifics, she stated, "I can't give you an exact time, but it has to happen each time somebody has a vacation and it has to [be] back-filled." Cantos did not think there had been any permanent transfers among the deposit clerks or deposit coordinators at the various sites.

Cantos stated that the deposit coordinators are trained on the job. She did not know whether the deposit coordinators need specialized degrees, or whether there are any educational requirements. None are mentioned in the official job description.

#### **Junior Reciprocity Analyst**

Cantos testified that there is a reciprocity arrangement with the toll authorities in other states, such that a New Yorker can use his E-Z Pass out of state, and the toll is credited to the out-of-state toll authority. The junior reciprocity analysts prepare reports regarding the exchange of moneys with the out-of-state toll authorities, the reconciliation of toll transactions and the appropriate exchange of funds among all the toll authorities. Information from the toll plazas is automatically transmitted into Vector, and the junior

reciprocity analysts extract reports through a report system called “Activate.” The junior reciprocity analysts are in contact with the toll authorities by telephone, e-mail, and the exchange of reports. Cantos testified that the junior reciprocity analyst is in the finance department, at the Staten Island facility, and reports to the senior reciprocity analyst.

Cantos stated that if the junior reciprocity analysts are on a vacation or out sick, the senior reciprocity analyst fills in for them. Cantos believed that there had been cross-training within the finance department to cover this type of work, but she did not know who had been cross-trained. She did not know whether any special certifications or educational requirements are needed for this position. The official job description states that a Bachelor’s degree is preferred but not required.

## **FACILITIES DEPARTMENT**

Cantos testified that the facilities department consists of a supervisor, three facilities clerks, and two receptionists. There are no disputed job classifications within this department.

### **Facilities Clerks**

Cantos testified that the three facilities clerks help to support the service center for facility needs, such as toner, paper supplies, and setting up the coffee service in the various break rooms. In addition, the facilities clerks help outside subcontractors with the mailing of daily outbound tags, and the preparation of overnight packaging, manifests and shipping documentation. The three facilities clerks fill in for the two receptionists on a daily basis, from 6:00 p.m. until 7:00 p.m.

### **Receptionists**

The receptionists answer telephone calls, and are responsible for receiving and logging in packages, correspondence and payments, and routing them appropriately. They greet visitors, “vet” them to see if they are ACS employees, and if not, make arrangements for them to have visitor passes. They respond to customers who call the local 718 number, and ask the customers questions so that they can route the calls appropriately. Unlike the CSRs, the receptionists do not have access to the Vector system.

The receptionists are required to have experience in a high call volume environment. One of the receptionists is a recent transfer from the call center, where she worked as a CSR, and receptionists have transferred into customer service positions in the past. Cantos testified that if a receptionist does not show up on a particular day, there are certain CSRs from the correspondence department, call center, and violations correspondence department, who fill in for them. Although the receptionists do not normally fill in as CSRs, the receptionist who transferred from the call center has since filled in at the call center, doing CSR work.

### **QUALITY ASSURANCE**

Cantos testified that there are currently two junior quality assurance analysts and three senior quality assurance analysts, all of whom report to the quality assurance manager. Both of these job classifications are in dispute. Quality assurance is a separate department from the other departments.

The quality assurance department reviews, assesses, and makes recommendations regarding all financial and customer service functions. The employees in the quality assurance department have a schedule of unannounced audits, in which they review and

spot check the work performed by the CSRs to ensure that they are consistently carrying out policies and procedures. In addition, they conduct a monthly review of new accounts, to make sure the information is transcribed correctly from the customer's application to the Employer's computer system.

### **Junior Quality Assurance Analysts**

Cantos testified that the junior quality assurance analysts assess the quality of the Employer's customer service, and whether it is meeting contractual requirements. They are there to "make sure there is third-party oversight as to the integrity of a given process," and they look for deficiencies, vulnerabilities, and mistakes. The junior quality assurance analysts observe the interactions of the CSRs with customers, and use the Vector system to review the work of the CSRs. For example, they listen in on telephone calls at the call center, and then check to see whether the CSRs did what they said they would do in the Vector system. They also perform audits of the tag department, perform inventory audits, sample the work performed by the CSRs in the correspondence department and walk-in centers, review it, and ask questions.

The quality assurance analysts ensure that employees are following policies and procedures, that they are not engaging in fraud, or creating liability or risk for the Employer or for the tolling authorities. According to Cantos, they look at the work flow but are not looking for ways that the work flow can be more efficient. This is done by the managers, the business analyst, and the operations analysts.

In addition, the quality assurance analysts review documents, such as applications filled out by customers, and compare them to what was input into the system, for accuracy. They then derive a quality rating or percentage of accuracy for a particular

group, and may recommend retraining. If they find that a particular CSR is committing fraud, they notify senior management and there is a series of steps that would involve HR, the client, and potentially, law enforcement.

Although the junior quality assurance analysts work in Staten Island, they travel to the remote sites to perform audits. However, the junior quality assurance analysts are supposed to have only minimal contact with the CSRs in the walk-in centers, because “it’s supposed to be through objective observation.” In all of the departments that the junior quality assurance analysts evaluate, they can listen in, observe, request and review documentation, but “it’s not an exchange of dialogue.”

The junior quality assurance analysts prepare audit reports that identify what they are auditing, and what the results were. The audit reports are an objective review of a process, identifying any problems and making findings and recommendations. The manager determines whether the recommendation is appropriate.

The job description for quality assurance analysts requires either a Bachelor’s degree in accounting or four years of experience in the E-Z Pass New York program. When the junior quality assurance analysts are on vacation, the senior quality assurance analysts fill in for them.

### **Senior Quality Assurance Analysts**

Cantos testified that the senior quality assurance analysts conduct more complicated audits than the junior quality assurance analysts. However, she asserted that they do not have supervisory responsibility, attend management meetings, or receive specialized management training. The official job description requires that the senior

quality assurance analysts either have a Bachelor's degree in accounting or management, or at least 10 years of auditing experience.

### **INFORMATION TECHNOLOGY ("IT" DEPARTMENT**

According to Cantos, the IT Department is staffed by the systems manager, Brian Moore, the senior systems analyst, Opshay Patel, who also holds the position of report production lead, and two junior systems analysts, who report to Opshay Patel. Cantos stated that other positions in the IT Department include the Vector system test administrator, who also reports to the IT manager, and "another analytical position that I'm not exactly sure what we're referring to it."<sup>2</sup> In addition, Cantos testified that, "There's kind of two divisions within the IT; there's the reports group and the reports analysts and then there are—there's a design manager and another individual that we work with to define the specifications for the system."<sup>3</sup>

The Petitioner takes the position that all IT department personnel should be excluded from the bargaining unit. The Employer agreed to exclude the senior systems analyst.

The IT department has the ability to query the customer database in support of customer service issues, as further described below. In addition, Cantos testified that the IT department "interacts with our development group in Germantown, Maryland, and performs reporting functions and clearing functions of the database and assists in the system specification for the Vector program that we use."<sup>4</sup>

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<sup>2</sup> This may be a reference to the performance monitoring analysts, discussed below, who were among the job classifications in the Employer's proposed unit on the first day of hearing.

<sup>3</sup> There was no further evidence regarding this other individual, or the reports analysts or design manager.

<sup>4</sup> The terminology used in connection with the IT Department was not defined.



### **Junior Systems Analysts**

Cantos testified that the junior systems analysts provide system support for Vector and other applications, and they use computer software to perform queries of the database in support of customer service issues. For example, the junior systems analysts can query the database to identify a particular population, such as private customers in a particular zip code, to determine whether to send “some type of targeted mailing” to them.

In addition, the Employer’s computer system regularly generates over 100 reports. The junior systems analysts make sure that the correct jobs were run, that the reports were generated, and that the reports went into the right agency folder.

Under cross-examination, Cantos testified that one aspect of the official job description for junior systems analysts is not correct. The junior systems analysts do not “report on discrepancies arising from the preparation of schedules and monitor corrective actions to ensure thorough follow-up and satisfactory resolution.”

The junior systems analysts are required to have technical expertise in areas such as query technique, system reporting applications, Visual Basic, and Actuate. In addition, Cantos testified that “there are some basic educational requirements” for the junior systems analysts. The official job description states that a “Bachelor’s degree [is] preferred but not required.” They also receive on-the-job training through the senior systems analyst on “how to navigate the Vector system using the actual reporting application.”

When a junior systems analyst is absent, either the other junior systems analyst or the senior systems analyst will cover for him. In addition, the junior systems analysts,

because they are familiar with the system and with system support, can cover for the LAN administrator and junior LAN administrator. Cantos testified that this happens often.

However, Cantos testified that the junior systems analysts do not often have face-to-face contact with the CSRs. Rather, they primarily interact with managers, supervisors and analysts.

### **Vector System Test Administrator**

Cantos testified that the Vector system test administrator tests the Vector system, looking at particular customer service applications and user interfaces, to ensure that the system is acting as intended. This involves coordination with CSRs throughout the program, who participate in the testing. The CSRs do not receive extra compensation for this. The Vector system test administrator reports to the IT department manager, and works closely with the IT manager to define test scripts and test modules. Test scripts are simulations in a test environment, in which the tester performs CSR functions to see whether they work the way they were intended. When the testing process reveals problems with the system, the Vector system test administrator reports these problems to the Germantown development team for correction. The system is then retested to make sure that the problems were corrected.

There is no written job description for the Vector system test administrator. Cantos testified that the Vector system test administrator does not attend management meetings.

According to Cantos, there “may be some educational requirements” for the position of Vector system test administrator, but no specialized training is required. It is

not necessary to have IT experience other than the ability to navigate the Vector system. Cantos testified that the Vector system test administrator is currently on a medical leave, and “CSRs throughout the program” are doing the same type of testing that the Vector system test administrator would normally do. However, it is not clear from this testimony whether these CSRs are merely participating in the testing, as CSRs would normally do, or whether they are performing the functions of the Vector system test administrator.

### **Performance Monitoring Analysts**

On the first day of the hearing, the Employer took the position that the bargaining unit would be inappropriate without the inclusion of the performance monitoring analysts. During the hearing, however, no testimony or documentation was provided with respect to this job classification.

### **LOCAL AREA NETWORK (“LAN”) DEPARTMENT**

Cantos testified that the local area network (“LAN”) department consists of one manager, and one junior LAN analyst or administrator. The LAN department maintains and supports the computers on-site. It is responsible for the installation, maintenance and support of all the computers in each location. The junior LAN administrator maintains the computer network, sets up employees’ computers, maintains the hardware, installs applications, and, for those employees who have e-mail access, makes sure employees’ e-mail is operative. He has inventory control responsibilities with respect to the equipment in the computer room and troubleshoots problems with “the appropriate technicians.”<sup>5</sup> Cantos testified that the junior LAN administrator is based at the Staten Island facility,

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<sup>5</sup>There was no further testimony regarding the “appropriate technicians.”

and can perform some of his tasks locally, but his job requires him to travel to all locations of the Employer.

Cantos testified that the junior systems analysts, because they are familiar with the system and with system support, can cover for the LAN administrator and junior LAN administrator. When asked, “Would a junior LAN administrator fill in for a CSR in any department,” Cantos replied, “Yeah,” without any explanation. No further evidence was supplied with regard to temporary interchange with employees in other departments. With regard to permanent interchange, Cantos testified that the individual who previously held this position transferred to the IT department.

Cantos testified that the requirements for the position of junior LAN administrator include IT certifications and knowledge.

#### **Junior Business Analyst**

The job description for the business analyst, which applies to the junior business analyst, indicates that this job classification falls within the Program Management Department. Normally, the junior business analyst would report to the senior business analyst, but the latter position has been vacant for two years. Currently, the junior business analyst, Dmitri Schmidt, reports directly to the program manager, and to Cantos. The Junior Business Analysts “provide client support primarily through the review and interaction of some of—of most of our automated services, IVR, ensuring that business rules are adequately incorporated into them, as well as performing hearing tests when it comes to customer materials like the application.” They use Vector and other software applications, such as Visual Basic.

Under cross-examination, Cantos further testified that the junior business analyst is involved with developing the interactive voice response (“IVR”) system. He works with the tolling authorities (also referred to as agencies) to define the business rules that should be incorporated into the IVR system, and obtains feedback from the CSRs in testing the product. When the tolling authorities promulgate a new rule, he gets direction from them as to where to insert the new rule in the IVR system, and what wording should be used. At times, the junior business analyst speaks with the program director or Cantos about how best to integrate the agencies’ business rules into the Employer’s customer service procedures and systems.

Cantos believed the position requires a Bachelor’s degree, but was “unfamiliar with their specific background.”

Cantos testified that when junior business analysts are on vacation or out sick and have “high priority assignments, we will—we will be able to backfill them with potentially another analyst, but just for very specific functions.”

### **Work Schedules**

Cantos testified that most employees work 45 hours per week, including a one-hour lunch break and two 15-minute breaks. At the Staten Island facility, the walk-in center and call center, referred to as “customer-facing” departments, are open from 7 a.m. until 7 p.m. on weekdays. On Saturdays, the walk-in center is open from 8:00 a.m. until noon and the call center is open from 8:00 a.m. until 2:00 p.m. The CSRs at the Staten Island walk-in center and call center work staggered shifts, starting in the early to mid-morning. Most of the other, “non-customer-facing” departments are open from 7 a.m.

until 6:00 p.m.<sup>6</sup> The CSRs in the “non-customer-facing” departments also work staggered shifts, starting at various times in the morning. The reception desk in the facilities department is covered from 7:00 a.m. to 7:00 p.m.

The hours worked by employees in the disputed job classifications are similar to those worked by employees in the petitioned-for bargaining unit. For example, Cantos testified that the trainers usually work from 8:00 a.m. until 5:00 p.m., but their hours “can vary.” The junior LAN administrator works from 7:00 until 4:00 p.m., but he often has to work extra hours, if the Employer’s systems need to be configured, or employees are unable to access their e-mail, or a new computer has to be installed. Cantos testified that the two junior systems analysts’ work schedules are “somewhere in the 7 to 6 range, most often in the 8 to 5 or 9 to 6 capacity.” The Vector system test administrator works from 9:00 a.m. until 6:00 p.m. The correspondence department analysts work from 7 a.m. until 4 p.m. The current Port Authority bus analyst works from 8:00 a.m. until 5:00 p.m., and the PA class mismatch transaction analysts work either from 7:00 a.m. to 4:00 p.m. or from 8:00 a.m. to 5:00 p.m.

### **RATES OF PAY**

Cantos testified that all CSRs are compensated on an hourly basis and paid bi-weekly. They are eligible for overtime, and do not receive bonuses or commissions. At the Staten Island facility, most CSRs are hired at Level 1, at the rate of \$12.69 per hour or \$25,900 per year. Based on their level of experience, they may also be hired at Level 2 or Level 3, with annual compensation ranging up to “\$30,000 or \$33,000.” Annual merit

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<sup>6</sup> Cantos did not specifically indicate whether they are on a Monday through Friday or Monday through Saturday schedule.

increases are performance-based. Cantos stated that CSRs in the upstate and downstate walk-in center have different pay scales.

During the course of the hearing, Cantos provided estimated pay ranges for various job classifications.<sup>7</sup> The Employer did not supply evidence regarding the exact rate of pay for any of the individuals in the disputed job classifications. However, towards the end of the hearing, the Petitioner offered into evidence a salary chart compiled by HR, the accuracy of which was agreed to by the Employer.

The salary chart indicates that the salary range for CSRs in the downstate walk-in centers, and for CSRs in all other departments in the Staten Island facility, is from \$25,900 to \$30,333 per year, but CSRs in the upstate walk-in centers earn from \$22,800 to \$26,733 per year. Similarly, the salary ranges for work leaders in the downstate walk-in centers, and all other departments in Staten Island, are from \$29,885 to \$35,702 per year. However, work leaders in the upstate walk-in centers earn in the range of \$26,338 to \$31,549 per year.

The salary chart indicates that in the violations department, the PA bus analyst and violations business accounts analysts earn salaries ranging from \$30,000 to \$35,135 per year. The salary range for the violations PA analyst is \$47,547 to \$52,432 per year.

In the operations management department, the salary chart indicates that the facility clerks and receptionists earn the same rate of pay as the downstate CSRs, ranging from \$25,900 to \$30,333 per year. The business analyst's salary is in the range of \$47,700 to \$79,500 per year.

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<sup>7</sup> Some of her estimates are cited in the parties' briefs. As stated above, the Employer agreed to the accuracy of the salary chart provided by the Petitioner.

In the call center, the salary chart indicates that the call monitor earns from \$25,900 to \$39,800 per year. The trainers receive the same salaries as the downstate work leaders, ranging from \$29,885 to \$35,702 per year.

In the IT department, the salary chart indicates that the junior LAN administrator's salary is in the range of \$45,000 to \$68,200 per year, and the junior systems analysts earn from \$46,800 to \$68,000 per year. The performance monitoring analyst earns between \$47,547 and \$55,800 per year.

In the correspondence department, the salary chart indicates that the correspondence department analyst earns between \$30,000 and \$35,135 per year.

In the finance department, the salary chart indicates that the junior reciprocity analyst earns between \$47,700 and \$79,500 per year. The various coordinators that the parties agreed to include in the unit earn have salaries ranging from the low 30's to the mid-30's, apart from the payroll coordinator, whose salary range is between \$31,500 and \$52,500. The downstate deposit coordinators' salaries are between \$27,992 and \$32,783, and the upstate deposit coordinators' salaries are between \$24,643 and \$28,861.

In the quality assurance department, the salary chart indicates that the quality assurance analysts earn between \$45,000 and \$61,300, and the senior quality assurance analysts earn between \$55,000 and \$79,500.

### **Benefits**

Cantos testified that all new hires get two weeks of vacation per year. After five years, they receive three weeks of vacation, and after 10 years, they receive 4 weeks of vacation. All job classifications at issue in this case have the same vacation schedules, medical and dental benefits.



### **Rules, Procedures and Guidelines**

Cantos testified that all employees are subject to the same work rules, policies and procedures. There is a general policy and procedures manual applicable to all employees, with separate segments for different departments, and an employee handbook applicable to all employees, which originates at corporate headquarters in Dallas, Texas. In addition, all E-Z Pass employees have to follow a “customer service reference matrix” or “dispute matrix,” setting forth over 100 possible customer service scenarios and how to respond to them. When there is a new policy or procedure, Cantos or the program manager would communicate this through the management chain, and through centralized mechanisms such as the Employer’s intranet site.

### **Dress Code**

Cantos testified that the downstate walk-in center CSRs wear business attire daily, as do the downstate deposit coordinators, who work closely with the walk-in center CSRs. However, at the upstate walk-in centers, both the CSRs and deposit clerks wear business casual. Most employees at the Staten Island facility wear business casual attire Monday through Thursday, and casual attire on Friday. Some employees wear casual attire on a daily basis because they engage in some physical work. These include the CSRs in the tag processing department, who have to pick up boxes, and the junior LAN administrator, who has to lift and move equipment.

Cantos testified that the Port Authority Violations Collections Analyst wears business attire when in court. Otherwise, the dress code for this position is business casual Monday through Thursday, and casual on Fridays.

Cantos testified that the Generic Violations Analysts have the same dress code as the Violations CSRs.

### **Timekeeping**

Cantos testified that all hourly employees log into a time-keeping system, using the magnetic stripe on the back of their employee ID badges. Hourly employees include CSRs, receptionists, deposit coordinators, trainers and work leaders.

### **Company Social Functions**

Cantos testified that there are a number of annual company functions such as a holiday party, an employee appreciation day, an ice-cream party, and a Halloween party. The holiday party is attended by employees from Staten Island, Queens, Yonkers, and Spring Valley. Although invitations are extended to employees at the Syracuse, Grand Island and Albany facilities, Cantos conceded that it is not practical for to attend. A “small, local party” is provided for them.

### **Human Resources Department**

Cantos testified that the personnel files for employees at the Staten Island facility and remote sites are maintained at the human resources (“HR”) department in Staten Island. This centralized HR Department handles benefits, conducts “webinars,” holds weekly conference calls with supervisory staff at all of the facilities, and visits the remote sites at least a few times a month, in part for the purpose of conducting counseling sessions.

### **Temporary Interchange Among Locations**

The record does not disclose any specific instances in which CSRs at the Staten Island facility have temporarily filled in for employees at other locations, or in which

employees at other locations have temporarily filled in for CSRs at the Staten Island facility. Cantos conceded that she has never sent CSRs from the walk-in center in Staten Island to cover an employee shortage in Spring Valley, and that the Employer has never required CSRs from the Staten Island walk-in center to staff the walk-in center in Queens. If the Employer needed to staff the Queens facility, Cantos testified, it would typically staff it with employees from the Yonkers facility, since that is a more compatible commute for employees. Cantos further conceded that the Employer does not send CSRs from Staten Island to cover employee shortages in Albany, and that “it’s not practical to send somebody from downstate to upstate.”

However, the upstate walk-in center employees sometimes perform work originating in Staten Island, without having any contact with the Staten Island employees. For example, during a backlog in the violations department at the Staten Island facility, some of the violations work was sent by overnight mail to the upstate walk-in centers to be researched and resolved. In addition, since the upstate walk-in centers tend to be a “very, very low traffic environment,” the Employer is “able to, I mean obviously you have to do the overnigher and the courier or whatever the case is, we can send, well, we do send work to them for them to work off.”

In addition, Cantos testified that a number of Staten Island employees work as CSRs at the fairgrounds during the New York State Thruway Authority’s state fair every year. There, they open accounts, take payments, and issue tags. There is also “a little bit of support from the Syracuse staff.” The record does not disclose the location or duration of the state fair.

Cantos further testified that sometimes, the work leaders at the walk-in centers fill in for work leaders at other locations.

**Permanent Interchange Among Locations**

Cantos testified that CSRs “frequently” transfer between walk-in centers, and that CSRs “often” transfer within the downstate region among the Staten Island, Spring Valley, Queens and Yonkers facilities. She did not provide specific examples, other than the fact that CSRs from the Spring Valley call center, which is closing imminently, recently transferred to the walk-in centers in Spring Valley, Yonkers and Queens because of this closure. While asserting that there have been permanent transfers from other walk-in centers to the walk-in center in Staten Island, Cantos did not reveal how often this occurs, or provide specific examples.

Cantos conceded that “if you have an opening in Grand Island, nobody from Staten Island is going to transfer there, for the most part, although we’ve had people from downstate go to upstate.”

**Distances Among Facilities**

Cantos estimated that the geographical distances from the Staten Island facility to the other walk-in centers are as follows:

<b><u>Walk-In Center</u></b>	<b><u>Distance from Staten Island Facility</u></b>
Spring Valley	35 miles
Queens	approximately 35 miles
Yonkers	approximately 35 to 40 miles
Albany	approximately 160 miles
Syracuse	approximately 250 miles

Grand Island

about 409 miles

### **Separate Supervision at the Remote Walk-In Centers**

Cantos testified that the seven walk-in centers have the following management hierarchy: the operations manager (Cantos) and an assistant operations manager or managers, followed by a supervisor at each location. The highest ranking individual on-site at the remote walk-in centers is the supervisor.

### **Centralized Management**

Cantos testified that she meets regularly with her management staff, consisting of three assistant operations managers. She does not often have meetings with supervisors or work leaders, but she has had such meetings in the past. In addition, she stated that, “Frequently, customer service representatives or other employees will request to meet with me to address a particular issue of their concern. I have coordinated meetings at my request with groups of people based upon certain subject matter, whether it’s to review a particular business rule, or to walk people through process re-engineering that may be going on in a given area, that I frequently hold meetings.”

### **Integration of Operations Among the Different Locations**

Cantos testified that at the end of each business week, the remote walk-in centers send certain documents to the main processing center in Staten Island for retention, including their financial settlements, any new accounts they opened, and any correspondence that needs to be forwarded to the Staten Island facility for processing. The remote walk-in centers obtain office supplies and E-Z Pass tags from the Staten Island facility. A customer can telephone the call center in Staten Island, and request to pick up a tag in Syracuse. Any customer account can be serviced at any walk-in center.

## **WORK LEADERS**

The Employer's official job descriptions indicate that the CSRs report directly to their work leaders, and the work leaders, in turn, report to their departmental supervisors. Cantos testified that in most departments, there is a ratio of 10 CSRs to a work leader, and 40 CSRs to a supervisor. However, at the Staten Island walk-in center, there are three work leaders for a staff of approximately 16, because the work leaders perform CSR work when CSRs are absent or during lunch breaks, or when the work load is heavy. In addition, the work leaders at the Staten Island walk-in center spend 30% to 40% of their day assisting CSRs with escalations from customers. Cantos testified that work leaders in the violations department and call center also perform some regular CSR work, and that tag processing work leaders "can" also do so, but not as often as other work leaders.

As described in detail below, both parties' witnesses testified regarding the extent of supervisory authority (or lack thereof) possessed by the work leaders. The official job descriptions for the work leaders indicate that they exercise some supervisory or quasi-supervisory functions, perform some regular CSR work, provide mentoring and technical assistance to the CSRs, and review and validate the CSRs' financial close-outs.

Cantos testified that the work leaders do not receive "specialized supervisory training," and do not attend management meetings. They do not have access to the personnel records of the CSRs assigned to them. Cantos testified that work leaders are hired from within, usually from among the existing pool of CSRs.

### **Assign/Direct**

Cantos testified that work leaders in the violations department are responsible for insuring that work is “adequately distributed amongst the staff.” Similarly, she stated that the work leaders at the walk-in centers “are responsible for the immediate management of the work.” As for the tag processing department, Maddocks testified that when she was a CSR in that department her work was assigned to her by her work leader. According to Cantos, the primary job duties of work leaders in the tag processing department are “to ensure that the work is distributed, that there are, you know, appropriate hand-offs between departments, so the receipt of the tags from the various inputs, to assist in troubleshooting situations that the CSRs would encounter; they may come across a complex situation or may be confused by a—you know, as to how to make a particular decision.” At the call center, work leaders’ computers have an application that allows them to see how long any one individual is on the telephone, and how many customers are in the queue waiting for their telephone calls to be answered. The work leaders and call monitors use this screen to direct CSRs to progress through their telephone calls.

Cantos testified that the Staten Island walk-in center CSRs request vacation time and sick leave from their supervisors, and not from their work leaders. Call center CSRs direct their requests for vacation and sick time through their work leaders, but these requests are then routed to the workforce analyst for approval. The workforce analyst determines staffing needs at the call center.

In the correspondence department, each work leader is assigned to a particular group of CSRs. Currently, as a CSR in the correspondence department, Maddocks stated, “I do bankruptcies so I get a batch of bank receipts. If there’s not bankruptcies on my desk when I come in the morning I see my work leader, and I either do CRMs or a

mixed batch,” depending on what the work leader decides. CRMs are responses to customers through the Employer’s web site. The work leader assigns CRMs to Maddocks through the Employer’s computer system. The procedure for assigning a mixed batch, which Maddocks defined as “a batch of work,” is for either the work leader or Maddocks to tell the sorting room that Maddocks needs a mixed batch, and the sorting room “will now sign out the work.” When Maddocks has a question about her work for the day, she goes to her work leader, and if the work leader can not answer it, she goes to her supervisor.

Cantos testified under cross-examination that she had a meeting with correspondence department work leaders more than a year ago, to discuss the performance of the department. “That work flow needed to be managed in a way so that they were being held accountable to the groups that were assigned to them. They needed to understand that their participation in the productivity of that—of each group was part of their job requirements. They seemed to seem disassociated from it.” When asked, “And the productivity of those CSRs reflects on the work leader?” she replied, “You’d like to think so, but they seem to not to think so.” Cantos continued: “I told them that as work leader, they were responsible for frequently checking in with the CSRs that were assigned to them, as to whether or not they needed additional work, and that they were to maintain more continuous contact with individuals, so that the individual and, then, the group could be productive.”

When asked under cross-examination, “Are they to assign additional work to CSRs when they don’t have enough work?” Cantos replied, “Yes.” When asked, “Are they to direct them to do that work?” she replied, “Well, they’re strongly encouraged. If



for some reason—The CSRs in the correspondence department in particular, work in batches. And, so, if they are aware that a CSR has finished a batch, then they are responsible to make sure that the CSR continues to be productive and will ask them, ‘Do you need another batch?’ And then, you know, we’ll coordinate that.” When asked, “Will they choose what batch to give that worker?” Cantos responded, “Well, the batches are mixed batches. So, we work on a first-in, first-out basis. So, it’s whatever the next oldest batch is.”

In addition, if a CSR is on a break for too long, the work leader is supposed to speak to the CSR. If a CSR is engaged in prolonged conversation and is not working, the work leader must identify that and ask the CSR to go back to work.

### **Discipline**

Cantos testified that the authority to discipline employees, or to write up employees for a violation of policy, rests with “the supervisor” or “their local manager or operations manager,” and that the human resources department (“HR”) is also involved in disciplinary decisions. Cantos testified that there is an escalation process for disciplinary actions involving a “very specific chain” and a “protocol,” before the discipline can be administered to an employee.

Two forms are used for disciplinary write-ups, the employee meeting form (“EMF”) and the employee contact form (“ECF”). These forms can be used for reporting an incident or a condition, such as chronic absenteeism or lateness. The forms include a place to fill in whether the employee is receiving a verbal warning, a written warning, or a final warning. But before this can be done, HR is consulted with respect to the employee’s disciplinary history.

Cantos testified that call center work leaders have “input” into disciplinary documents that are prepared. The work leader drafts the document, which is then reviewed by the supervisor, assistant manager, manager, and human resources department.

To illustrate the Employer’s disciplinary process, Cantos discussed a number of hypothetical scenarios. She testified that if a work leader were to observe an employee being rude to a customer or pocketing a \$100 bill, the work leader would record this on an EMF or ECF, and would submit this write-up to the employee’s supervisor. If the misconduct is egregious, such as pocketing cash, the work leader or anyone else who observes it must respond, and advise senior management. If it is a matter of a CSR being rude to a customer, the work leader would tell the CSR, “Listen, I just overheard how you—what that discussion you were having and you were being rude to that customer. I’m going to be escalating this.” However, the work leader would not have the ability to issue discipline to the CSR on his or her own authority. The level of discipline would depend on the employee’s past history, of which the work leader, and even the supervisor, may not be aware. In some cases, only HR would be aware of the employee’s past history, and the final determination might be made by Cantos in conjunction with HR. Accordingly, the work leader documenting the misconduct would not ordinarily recommend a specific level of discipline. However, Cantos testified that there are some exceptions to this:

If a work leader observed the situation and the CSR was nasty, okay, or flippant or was having a bad day, that’s one thing, but if the CSR, you know, yelled at the customer or used profanity with the customer or anything like that, the CS—we would—the work leader’s first-hand account, we could hear the—we would take their opinion into account to say, you know, “you have to hear how they were speaking to them,” okay, you know, “this really should be—it shouldn’t be—if

they have no history this shouldn't be a first written warning," or something like that. But they have no input other than something like that.

In this hypothetical scenario, Cantos did not indicate how likely it would be that the work leader's disciplinary recommendation would be followed.

Cantos testified that in a walk-in center, if there is a cash difference in excess of \$10, that must result in an ECF. At the end of the work day, if the work leader discovers a cash discrepancy when reconciling a CSR's work, the work leader works with the CSR to see if they can resolve the discrepancy. If they cannot, the work leader does a shortage or overage form, and submits it to the supervisor. The supervisor submits it to the assistant manager, who asks questions, and submits a recommendation to Cantos. Cantos then submits a recommendation to HR, and HR, in conjunction with the employee's supervisor, "will administer it to the employee."

Further, if a CSR has multiple cash disparities, his or her supervisor (rather than the work leader) writes up a disciplinary action, which then goes to the assistant operations manager, and then to Cantos. Cantos would then work with HR in deciding on the appropriate level of discipline.

In contrast with Cantos, the Petitioner's witness, CSR Antoinette Maddocks, provided a specific example of a disciplinary action involving a work leader. In May, 2008, Maddocks had a meeting with her work leader for excessive tardiness, which was documented in an employee meeting form signed by the work leader and listing all instances in which Maddocks swiped in late. The form states, "Immediate and on-going improvement is required from Antoinette. Any additional infractions with tardiness and or exceeding allotted sick and or vacation days will result in further disciplinary action up to and including termination. The employee has been advised that this also includes

failure to adhere to policies and or poor work product. By signing this form, employee acknowledges being told about this possible next step.” The write-up was signed by just two individuals: Maddocks and the work leader. Maddocks admitted under cross-examination that she did not know whether anyone other than the work leader approved the write-up. However, the Employer did not offer evidence that the write-up was approved by someone other than the work leader, or that the work leader’s decision to issue the write-up in this particular instance was based on anything other than her own independent judgment. The record does not disclose an explanation for the apparent disparity between the testimony by Cantos, indicating that work leaders can not make disciplinary decisions on their own, and the write-up signed by the work leader alone.

Prior to the write-up for tardiness, Maddocks testified that when she was working in the tag department, she was given a warning for exceeding her vacation time. The warning was given to her by “a work leader and a supervisor present at that time.” That warning is not in evidence. About five years prior to the hearing, after Maddocks took an unscheduled break while working in the call center, her work leader asked her why her break had taken longer than 15 minutes, and told her, “Well, you know you only get 15 minutes, and you come in at three. If you have longer than 15 minutes you need a doctor’s note.” After obtaining a doctor’s note, Maddocks gave it to the “work leader, human resources and my supervisor.”

### **Discharge**

To terminate an employee, the approval of the Employer’s corporate human resources department is required, according to Cantos. Subsequent to an employee’s receiving a final written warning, HR would ask Cantos whether she recommends

termination. Terminations are administered by a senior manager, in conjunction with HR. Local terminations must be approved by corporate human resources.

### **Performance Appraisals**

In its brief, the Petitioner argues that work leaders “reward” employees because they are involved in the drafting of performance appraisals.<sup>8</sup> The performance appraisals are the basis for the CSRs’ merit increases, if any, and a specific rating on an annual evaluation is one of the requirements for certain promotions. However, there is no evidence that the work leaders make recommendations regarding merit increases or promotions, and no specific examples were provided.

The Petitioner’s brief states that, “All Workleaders reward employees because they complete performance appraisals that are signed off by the Supervisor, who does no independent investigation.”<sup>9</sup> In support of this statement, the Petitioner cites page 137 of the transcript. However, page 137 of the transcript sets forth the following testimony by Cantos, which is in conflict with the Petitioner’s claim that the supervisor does no independent investigation:

A: The work leader will draft up the performance appraisal for the tag processing CSR.

Q: And then who signs that document?

A: The supervisor. The supervisor and the assistant manager.

Q: Does the work leader have the authority to sign off and deliver that performance review if the supervisor doesn’t approve it?

A: No. Performance appraisals are administered by the supervisor.

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<sup>8</sup> Brief of Petitioner at 8.

<sup>9</sup> Brief of Petitioner at 8.

Cantos testified that the work leaders participate in drafting performance appraisals in the larger departments, such as the call center, correspondence, and violations departments. They then submit the performance appraisals to the supervisor for review and approval, and then the assistant manager. Cantos testified that the work leaders in the tag processing department either “have input into” or “draft” the performance appraisals for the CSRs, which are signed by the supervisor. Similarly, she stated that the call center CSRs have performance reviews that are “crafted” by the work leaders, then approved by the supervisors, and then by the assistant manager or manager. The performance appraisals are delivered to the employee by either the supervisor or by the work leader.

#### **Other Supervisory Indicia**

Cantos testified that call center work leaders do not have the ability to hire, transfer, suspend, lay off, recall, promote, or discharge employees. Similarly, Cantos stated that the work leaders at the walk-in centers do not hire, suspend, lay off, recall, discharge, or reassign CSRs, recommend raises, or discipline them without consulting their superiors.

### **DISCUSSION**

#### **Other call center**

#### **CSRs at other walk ins**

#### **Deposit coordinators / clerks at other locations**

### **CSRs AT LOCATIONS OTHER THAN STATEN ISLAND**

In making unit determinations, “the Board first considers the union’s petition and whether that unit is appropriate.” *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). If

it is “not appropriate, the Board may examine the alternative units suggested by the parties, and also has discretion to select an appropriate unit that is different from the alternative proposals of the parties. The Board generally attempts to select a unit that is the ‘smallest appropriate unit’ encompassing the petitioned-for classifications.” *Overnite Transportation Company*, 331 NLRB No. 85 (2000). However, it is well-established that “there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950)(emphasis in original), *enf’d on other grounds*, 190 F.2d 576 (7<sup>th</sup> Cir. 1951).

The “community of interest” criteria applied by the Board in making unit determinations include “distinctions in skills and functions of particular employee groups, their separate supervision, the employer’s organizational structure and differences in wages and hours, as well as integration of operations, and employee transfers, interchange and contacts.” *Atlanta Hilton and Towers*, 273 NLRB 87, 90 (1984); *see also Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Additional relevant factors include fringe benefits and other working conditions, work location, degree of centralized control over the employer’s day-to-day operations and personnel policies, and previous bargaining history (or lack thereof) at the Employer. *See J.C. Penney Company, Inc.*, 328 NLRB 766 (1999); *Transerv Systems, Inc.*, 311 NLRB 766 (1993); *Allied Gear and Machine Company, Inc.*, 250 NLRB 679 (1980). In resolving unit issues pertaining to multi-location employers, the Board considers the geographical relationship among the facilities involved; the functional integration of operations; the degree of employee interchange; the similarity of employee skills, functions, working conditions, and

benefits; shared supervision; the extent of local autonomy, balanced against the extent of centralized control over daily operations, personnel and labor relations; bargaining history, if any exists; and the extent of organization. *See, e.g., Novato Disposal Services, Inc.*, 328 NLRB No. 118 (1999); *R & D Trucking*, 327 NLRB 531 (1999); *Passavant Retirement and Health Center*, 313 NLRB 1216 (1994); *Globe Furniture Rentals, Inc.*, 298 NLRB 288 (1990); *Twenty-First Century Restaurant of Nostrand Avenue, Licensee of McDonald's Corporation*, 192 NLRB 881 (1971); *Davis Cafeteria*, 160 NLRB 1141 (1966); *Sav-On Drugs, Inc.*, 138 NLRB 1033 (1962); *Barber-Colman Company*, 130 NLRB 478 (1961).

By weighing these various factors, the Board evaluates whether the employees in the proposed unit “share a sufficiently distinct community of interest from other employees as to warrant a separate unit,” *Transerv*, 311 NLRB at 766, or conversely, whether other employees share such a strong community of interest with the employees in the proposed unit that their inclusion in the unit is required. *J.C. Penney*, 328 NLRB at 766. “It is well established that the Board does not approved fractured units, i.e., combinations of employees that are too narrow in scope or that have no rational basis.” *Seaboard Marine*, 327 NLRB at 556 (citing *Colorado National Bank of Denver*, 204 NLRB 243 (1973)).

In the instant case, the Employer provided evidence that all employees in the New York E-Z Pass program have the same benefits, and are subject to the same rules, procedures and guidelines. There is a centralized human resources department, and the Employer's operations are integrated. However, the record fails to establish that the CSRs at locations other than Staten Island share such a strong community of interest with



the employees in the proposed unit that their inclusion in the unit is required for the resulting unit to be appropriate.

The CSRs at locations other than Staten Island are separately supervised. There is only very minimal evidence of permanent transfers, temporary interchange or contacts between CSRs working in Staten Island and CSRs working at other locations. Although the CSRs at other locations are sometimes asked to handle work originating in Staten Island, which is sent to them by overnight mail, the work does not involve interchange or contacts with the Staten Island employees. Moreover, the upstate walk-in centers have separate pay scales, and a different dress code from the downstate walk-in centers. Employees from the upstate walk-in centers do not attend the annual holiday party, but have a separate, local party. The geographical distances between the Staten Island facility and the other walk-in centers are significant, ranging from 35 miles to over 400 miles.

With regard to the CSRs from the Spring Valley call center, there is no evidence of interchange and contacts between them and the employees in the petitioned-for bargaining unit. Moreover, Cantos testified that the Spring Valley call center will be closing imminently. Because of this imminent closure, CSRs from the Spring Valley call center recently transferred to the walk-in centers in Spring Valley, Yonkers and Queens.

Under these circumstances, the record fails to establish that CSRs at locations other than Staten Island have such a strong community of interest with CSRs in Staten Island that their inclusion in the bargaining unit is required.

**DEPOSIT COORDINATORS AND DEPOSIT CLERKS AT LOCATIONS  
OTHER THAN STATEN ISLAND**

As with the CSRs at the remote walk-in centers, the record fails to establish that the deposit coordinators and deposit clerks at locations other than Staten Island have such a strong community of interest with the four deposit coordinators in Staten Island that their inclusion in the bargaining unit is required. The three upstate deposit coordinators report to the supervisor at each of those upstate locations, and have other CSR responsibilities as well. There is no evidence of any permanent or temporary interchange between the upstate deposit clerks and the Staten Island deposit coordinators. The upstate deposit clerks fall within a lower pay scale than the downstate deposit coordinators, and the geographical distances to Staten Island range from 160 miles to over 400 miles.

The deposit coordinators at the Queens and Yonkers facilities are a closer case. They are in the same department as the Staten Island deposit coordinators, and they report to the same supervisor. The Queens and Yonkers facilities have one deposit coordinator each, and the Staten Island facility has four. When one of the four Staten Island coordinators is absent, according to Cantos, the Queens and Yonkers deposit coordinators “can” come to Staten Island to fill in, and vice versa. However, Cantos was unable to think of any specific instances when this occurred, and she did not indicate how often this occurs. Cantos further testified that she did not know of any permanent transfers among the deposit coordinators at the different locations. The Staten Island facility is about 35 miles from the Queens facility, and 35 to 40 miles from the Yonkers facility. Under these circumstances, the community of interest among the deposit coordinators at the three downstate locations is not so overwhelming as to compel the

inclusion of the Yonkers and Queens deposit coordinators in the petitioned-for bargaining unit. The inclusion of the Yonkers and Queens deposit coordinators in a single-facility Queens or Yonkers bargaining unit would be just as appropriate.

### **WORK LEADERS**

In enacting Section 2(11) of the Act, Congress intended to distinguish “between true supervisors who are vested with ‘genuine management prerogatives,’ and ‘straw bosses, lead men, and set-up men’ who are protected by the Act even though they perform ‘minor supervisory duties.’ ” *S. Rep. No. 105, 80<sup>th</sup> Cong., 1<sup>st</sup> Sess., 4 (1947)*, *quoted in Providence Hospital*, 320 NLRB 717, 725 (1996). Accordingly, individuals are statutory supervisors only if (1) they hold the authority to engage in one of the twelve supervisory functions set forth in the Act, (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,” and (3) their authority is held “in the interest of the employer.” *Kentucky River Community Care, Inc.*, 121 S.Ct. 1861, 1867 (2001). The burden of proving that an employee is a statutory supervisor is on the party alleging such status. *Kentucky River*, 121 S.Ct. at 1866. In light of the exclusion of supervisors from the protection of the Act, this burden is a heavy one. *Chicago Metallic*, 273 NLRB 1677, 1688, 1689 (1985). “It is well settled that an employee cannot be transformed into a supervisor merely by the visiting of a title and *theoretical* power to perform one or more of the enumerated functions in Section 2(11) of the Act.” *Property Markets Group, Inc.*, 339 NLRB 199 (2003)(emphasis added). When “there is inconclusive or conflicting evidence on specific indicia of supervisory authority, the Board will find that supervisory status has not been established with respect to those criteria.” *Property Markets Group, Inc.*, 339 NLRB 199, 205 (2003).

To establish that an alleged supervisor uses “independent judgment,” the individual “must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 693 (2006). A judgment “is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement.” *Oakwood*, 348 NLRB at 693. Moreover, the exercise of “some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status.” *Oakwood*, 348 NLRB at 693 (quoting *Bowne of Houston*, 280 NLRB 1222, 1223 (1986)). If an “assignment is made solely on the basis of equalizing workloads, then the assignment is routine or clerical in nature and does not implicate independent judgment, even if it is made free of the control of others and involves forming an opinion or evaluation by discerning and comparing data.” *Oakwood*, 348 NLRB at 693. By contrast, if a “registered nurse weighs the individualized condition and needs of a patient against the skills or special training of available nursing personnel, the nurse’s assignment involves the exercise of independent judgment.” *Oakwood*, 348 NLRB at 693. The use of “independent judgment” must be demonstrated through evidence of “particular acts and judgments,” *North Shore Weeklies, Inc.*, 317 NLRB 1128 (1995), rather than through “general, conclusory claims.” *Crittenton Hospital*, 328 NLRB 879 (1999).

In *Oakwood*, the Board held that “to ‘assign’ for purposes of Section 2(11) refers to the...designation of significant overall duties to an employees, not to the [alleged supervisor’s] ad hoc instruction that the employee perform a discrete task.” *Oakwood*,

348 NLRB at 689. “Assign” can also mean “designating an employee to a place (such as a location, department or wing)...[or] a time (such as a shift or overtime period).”

*Oakwood*, 348 NLRB at 689. Proof of independent judgment in the assignment of employees entails the submission of concrete evidence showing how assignment decisions are made. *See Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000); *Crittenton Hospital*, 328 NLRB 879 (1999). The Board and federal courts “typically consider assignment based on assessment of a worker’s skills to require independent judgment and, therefore, to be supervisory,” except where the “matching of skills to requirements [is] essentially routine.” *Brusco Tug & Barge Co.*, 247 F.3d 273, 278 (D.C. Cir. 2001) (citing *Hilliard Development Corp.*, 187 F.3d 133, 146, 161 LRRM 2966 (1<sup>st</sup> Cir. 1999)).

The term “direct” encompasses an individual who has “men under him” and decides “what job shall be undertaken next or who shall do it,” provided that the direction is both “responsible” and carried out with “independent judgment.” *Oakwood*, 348 NLRB at 691. The degree of independent judgment required to direct employees in the performance of routine, repetitive tasks is correspondingly reduced. *Loyalhanna Health Care Associates*, 332 NLRB 933 (2000); *Ten Broeck Commons*, 320 NLRB 806, 811 (1996). For example, in the health care field, preparing a care plan and directing other employees to carry it out does not generally require the use of independent judgment. *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890, 891, 891 n.5 (1997); *Ten Broeck Commons*, 320 NLRB at 811, 811 n. 10 (1996). Such a care plan has been held to be a mere “check list” of routine job duties, or “a recipe of discrete tasks to be performed by an aide who is adequately trained in performing the work defined in the recipe.” *Franklin Hospital*, 337 NLRB 826, 831 (2002). Whether direction is “responsible” as

required by Section 2(11) depends “on whether the alleged supervisor is held fully accountable and responsible for the performance and work product of the employees he directs.” *Schnurmacher Nursing Home*, 214 F.3d 260, 267 (2<sup>nd</sup> Cir. 2000); *Oakwood*, 348 NLRB at 691 (quoting *NLRB v. KDFW-TV, Inc.*, 790 F.2d 1273 (5<sup>th</sup> Cir. 1986)). To establish accountability for the purposes of responsible direction, the “prospect of adverse consequences” must be demonstrated. *Oakwood*, 348 NLRB at 692. Such accountability and responsibility can be established through evidence of disciplinary warnings and evaluations specifically holding supervisors accountable for their failure to direct and delegate work to subordinates. *Schnurmacher*, 214 F.3d at 266-67.

With regard to the authority to discipline employees as contemplated by Section 2(11) of the Act, the power to “point out and correct deficiencies” in the job performance of other employees does not establish such authority. *Crittenton Hospital*, 328 NLRB at 879 (citing *Passavant Health Center*, 284 NLRB 887, 889 (1987)). Reporting on incidents of employee misconduct is not supervisory if the reports do not always lead to discipline, and do not contain disciplinary recommendations. *Schnurmacher*, 214 F.3d at 265 (citing *Meenan Oil Co.*, 139 F.3d 311 (2<sup>nd</sup> Cir. 1998); *Ten Broeck Commons*, 320 NLRB 806, 812 (1996); *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890 (1997)). To confer 2(11) status, the exercise of disciplinary authority must lead to personnel action, without the independent investigation or review of other management personnel. *Beverly Health and Rehabilitation Services, Inc.*, 335 NLRB No. 54 (2001).

While Section 2(11) does not include “evaluate” in its enumeration of supervisory functions, an individual performing an evaluation may be found to be a supervisory if the evaluation directly affects the wages or job status of the employee being evaluated.

*Harborside Healthcare*, 330 NLRB 1334 (2000). However, for such a finding to be made, the evidence must establish that there is a direct link between the evaluation and a pay increase or decrease, or a change in job status. *Harborside*, 330 NLRB at 1335. In *Harborside Healthcare*, the nurses whose supervisory status was at issue prepared evaluations of nursing assistants, but they made no recommendation on their evaluations with regard to wage increases. *Harborside*, 330 NLRB at 1335. Rather, the director of nursing merely took their evaluations “into consideration” when making decisions regarding merit wage increases. *Harborside*, 330 NLRB at 1335. Further, there was no indication that any nursing assistant had ever received a merit wage increase. *Harborside*, 330 NLRB at 1335. Moreover, managers had returned evaluations to the nurses for revision before they were reviewed by the director of nursing. *Harborside*, 330 NLRB at 1335. Under these circumstances, the nurses were not supervisors, but rather were “more akin to...more experienced lead employees, who submit to higher authority their opinions on the abilities of the employees that they evaluate.” *Harborside*, 330 NLRB at 1335.

In the instant case, the record reflects that the work leaders do not “assign” employees, in the sense of designating “significant overall duties,” or “designating an employee to a place (such as a location, department or wing)...[or] a time (such as a shift or overtime period).” *Oakwood*, 348 NLRB at 689. However, the testimony by Cantos that work leaders ensure that work is “adequately distributed amongst the staff” indicates that they “direct” employees in the sense of deciding “what job shall be undertaken next or who shall do it.” *Oakwood*, 348 NLRB at 691. Moreover, Cantos admitted under cross-examination that work leaders in the correspondence department are “held

accountable,” that “their participation in the productivity of...each group [is] part of their job requirements,” and that she met with them to admonish them for their failure to meet these responsibilities. This testimony establishes that the work leaders’ direction is “responsible.” However, the evidence does not establish that the work leaders used independent judgment in directing employees. In the correspondence department, for example, batches of work are assigned to the CSRs “on a first-in, first out basis...whatever the next oldest batch is.” There is no evidence that an individualized evaluation of the CSRs’ abilities or background enters into the process of deciding “what job shall be undertaken next or who shall do it.”

Further, although the work leaders participate in the drafting of performance evaluations, the evaluations are reviewed, approved and signed by the supervisors and assistant managers or managers. When drafting the performance evaluations, there is no evidence that the work leaders make recommendations with regard to the promotion of employees, the granting of merit increases, or the specific rating to be given a particular individual, or that such recommendations are followed by the supervisors or managers. Thus, there is no “direct link” between the performance evaluations drafted by the work leaders and the CSRs’ promotions or merit increases, if any.

Cantos testified that the work leaders do not have the power to hire, transfer, suspend, lay off, recall, promote, or discharge employees. Similarly, Cantos stated that the work leaders at the walk-in centers do not hire, suspend, lay off, recall, discharge, discipline, or reward employees, or recommend raises.

With respect to the power to discipline employees, Cantos testified that the work leaders are not empowered to make such decisions on their own, and that their



recommendations are only taken into account in some instances. The Petitioner introduced into evidence a written warning or “employee meeting form” that was signed only by a work leader and an employee, and not by a supervisor or manager. However, the record does not reveal whether the work leader made the decision to issue the disciplinary warning independently, without consulting a supervisor or manager, or a set of guidelines that must be followed. The record does not disclose whether issuing such warnings is a regular part of this work leader’s job description, or whether she was merely filling in as a temporary supervisor. The record does not indicate whether any other work leaders have ever issued disciplinary warnings. Furthermore, the Board has held that the sporadic and infrequent exercise of a supervisory indicia is insufficient to confer Section 2(11) status upon an individual. See e.g., *Chrome Deposit Corporation*, 323 NLRB 961 (1997). None of the work leaders testified at the hearing about this or any other issue. Under these circumstances, the evidence is insufficient to meet the Petitioner’s burden of proof to establish that the work leaders are supervisors. The Petitioner has not asserted any other reason for excluding them from the bargaining unit.

I find that the work leaders are not supervisors, but are akin to more experienced or lead employees who perform many of the same functions as the CSRs in their departments, and who share a community of interest with them. Accordingly, I find that the work leaders should be included in the petitioned-for bargaining unit.

### **TRAINERS**

The Petitioner argues that the three trainers are supervisors, contending that they evaluate employees who are trained, including new hires working for the temporary agency. According to the Petitioner, these evaluations are used to determine whether the

temporary employee will be made permanent by ACS. However, the record does not support this assertion. Rather, the official job description merely states that the trainers “complete required evaluations” after every training session. It does not state that these evaluations are used in hiring decisions. Cantos testified that the trainers provide “feedback” on the employees they train, and the trainees evaluate their trainers. Accordingly, I find that there is insufficient evidence to establish that the trainers meet the statutory definition of supervisors.

However, I find that the exclusion of trainers from the bargaining unit would not render the unit inappropriate. Although the trainers are assigned to the call center, they report to the training supervisor, unlike the call center CSRs in the petitioned-for unit. The nature of the work that they perform is different from the work performed by members of the petitioned-for unit. When a trainer is absent, either another trainer or the training supervisor fills in. There is no evidence that trainers ever perform CSR work, or that the CSRs ever perform training work. Thus, I find that the community of interest between the trainers and the employees in the petitioned-for bargaining unit is not so overwhelming that their inclusion in the bargaining unit is required.

### **ALLEGED MANAGERS**

The Board has long defined managerial employees “as those who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer’s established policy.” *General Dynamics Corp.*, 213 NLRB 851, 857 (1974). Managerial status “is reserved for those in executive-type positions, those who are closely aligned with management as true representatives of management.” *General*

*Dynamics*, 213 NLRB at 857. The exercise of discretion, judgment, technical expertise in administrative functions, or professionalism in the ordinary course of employment does not confer executive or managerial status. *General Dynamics*, 213 NLRB at 857-58.

The “authority to exercise considerable discretion does not render an employee managerial where his decision must conform to the employer’s established policy.”

*Eastern Camera and Photo Corp.*, 140 NLRB 569, 571 (1963)(store managers held not managerial). However, managerial status is not confined to positions susceptible to conflicts of interest in labor relations. *Bell Aerospace Company Division of Textron Inc.*, 416 U.S. 267, 94 S.Ct. 1757 (1974). The “specific job title of the employees involved is not in itself controlling.” *Textron*, 416 U.S. at 290 n. 19; 94 S.Ct. at 1769 n. 19.

In the instant case, with respect to the job classifications that the Petitioner believes to be managerial, the Petitioner’s brief sets forth a number of quotations from the Employer’s official job descriptions and from Cantos’ testimony, followed by assertions that these quotations prove that the employees at issue are clearly managerial. However, the Petitioner does not cite any case law in which managerial status was found under similar facts.

### **Analysts in the Correspondence Department**

#### **PA Class Mismatch Transaction Analyst**

Cantos testified that the PA class mismatch transaction analysts review customers’ accounts and perform “outreach” to customers who “use an E-Z Pass programmed for a particular vehicle type, while driving a different vehicle type that requires a higher toll. The class mismatch transaction analysts try to convince such customers to get the proper tags and pay the correct toll. The class mismatch transaction

analysts keep a log of accounts they contacted, and perform a settlement at the end of the day.

The Employer's official job description for the PA class mismatch transaction analysts sets forth a list of 18 job responsibilities. Out of these 18, the Petitioner relies on two job duties, item numbers 12 and 13, in arguing that the PA class mismatch transaction analysts are managers:

- Ongoing assessments of mismatch operations, making formal recommendations for workflow improvements and cost savings
- Act as the primary liaison between departments and the toll authority regarding all mismatch transaction processing.

There is no record evidence describing what these two job responsibilities entail. If the PA class mismatch transaction analysts make assessments and recommendations, or act as liaisons with a client, this does not prove that they formulate and effectuate management policies, are in an executive-type position, or are closely aligned with management as true representatives of management. *General Dynamics*, 213 NLRB at 857. Accordingly, I find that the PA class mismatch transaction analysts are not managers as alleged by the Petitioner. Moreover, the Petitioner's brief does not set forth any other reason for excluding the PA class mismatch transaction analysts from the bargaining unit.

The record reflects that the PA class mismatch transaction analysts spend about 25% of their day performing the same general customer service and correspondence functions as correspondence department CSRs. In addition, they are assigned to perform general correspondence functions when there is a backlog in their department. This evidence establishes a significant degree of interchange between the PA class mismatch

transaction analysts and other employees in their department, whom the Petitioner seeks to include in the unit. Accordingly, I find that the exclusion of the PA class mismatch transaction analysts from the bargaining unit would create a fractured unit, and that the PA class mismatch transaction analysts share such a strong community of interest with the employees in the proposed unit that their inclusion in the unit is required.

### **Correspondence Department Analyst**

Cantos testified that the correspondence department analyst checks mail house work, prepares reports and obtains archival data through a system supported by the mail house. This individual also handles customer escalations from the correspondence department CSRs. Cantos testified that when the correspondence department analyst is on vacation or out sick, the functions of this position are performed by CSRs in the correspondence department who have been trained to perform the correspondence department analyst's job duties. Thus, the record discloses a significant degree of interchange between the correspondence department analyst and other employees in the correspondence department, whom the Petitioner seeks to represent.

The official job description for the correspondence department analyst sets forth a list of 13 job duties. These include the validation of mail house work, and various aspects of report generation, referred to by Cantos in her testimony. The first two job responsibilities set forth in the official job description, relied on by the Petitioner in arguing that the correspondence department analyst is a manager, are the following:

- Identify business trends through data analysis, making formal recommendations for corrective and/or preventative action.
- Assist in the assessment of department operations, making formal recommendations for workflow improvements/efficiencies and cost reduction opportunities.

Cantos characterized the first of these as an “overstatement.” The record does not disclose any details or specific examples as to what these first two job responsibilities entail. Based on the wording of the official job description, it appears that both involve making recommendations, rather than formulating and effectuating management policies as required by *General Dynamics*, 213 NLRB at 857. The Petitioner also relies on the relatively high salary scale for this position, the requirement of having either a “BS or equivalent work experience” (the current incumbent has ACS experience, but no degree), and that the correspondence department analyst reports to an assistant operations manager. However, reporting to a manager does not make an employee a manager, any more than reporting to a supervisor would make an employee a supervisor. None of the factors relied on by the Petitioner establish that the correspondence department analyst is in an executive-type position, or is closely aligned with management as a true representative of management. *General Dynamics*, 213 NLRB at 857.

Accordingly, I find that the correspondence department analyst is not a manager, as alleged by the Petitioner. The Petitioner’s brief does not set forth any other reason for excluding the correspondence department analyst from the bargaining unit. Based on the significant degree of interchange between the correspondence department analyst and other employees in the correspondence department, whom the Petitioner seeks to represent, I find that their exclusion from the unit would create a fractured unit, and that they share such a strong community of interest with the employees in the proposed unit that their inclusion in the unit is required.

#### **Analysts in the Violations Department**

#### **Violations Business Account Analyst and Port Authority Accounts Analyst**

Cantos stated that there is one violations business account analyst and one Port Authority accounts analyst. There is no further record evidence that specifically pertains to these two job classifications.

However, Cantos testified that all violations department analysts receive escalated calls from the CSRs, and help to cover the telephones in the violations department during violations initiatives. In addition, all violations analysts help the CSRs by performing violations correspondence processing duties when there are backlogs. Thus, there is evidence of significant contact and interchange between the six violations department analysts, and the violations department CSRs whom the Petitioner seeks to include in the unit. Because the violations department analysts and violations department CSRs are part of the same department, I find that the exclusion of the violations business account analyst and Port Authority accounts analyst would create a fractured unit, and that they share such a substantial community of interest with the employees in the proposed unit that their inclusion in the unit is required, in the absence of evidence that they are managers or fall within some other statutory exclusion. The Petitioner has failed to provide such evidence.

Accordingly, I find that the violations business account analyst and Port Authority accounts analyst must be included in the bargaining unit.

**Port Authority Violations Bus Analyst**

Cantos testified that the Port Authority violations bus analyst performs customer service and account maintenance functions associated with violations by bus companies, and performs “transfer of responsibility” transactions similar to those performed by the RCLA clerk. The parties have agreed that the RCLA clerk belongs in the unit.

In its brief, the Petitioner relies on the official job description for the Port Authority bus analyst, which states that the responsibilities of this position include “communicat[ing] violations issues verbally and in writing with high level personnel at the Port Authority as well as ACS and customers.” The Petitioner argues that “[d]irect access to ‘high level personnel’ at the Port Authority regarding violations issues show that the [Port Authority violations bus analyst] is given discretion independent of ACS’s policies to resolve such issues.”<sup>10</sup> The record does not support this conclusion. The Petitioner also relies on the following elements of the official job description:

- Identify Port Authority Bus Account related issues and resolution strategies
  - \*                   \*                   \*                   \*                   \*
- Create, design and implement process improvement techniques, enhancing current activities

However, in the absence of any testimony describing what these job duties entail, the official job description is insufficient to support the conclusion that the Port Authority violations bus analyst formulates and effectuates management policies, is in an executive-type position, or is closely aligned with management as a true representative of management. *General Dynamics*, 213 NLRB at 857. The relatively high salary scale for this position also fails to establish that the Port Authority violations bus analyst is a manager.

In the absence of evidence establishing that the Port Authority violations bus analyst is a manager as alleged by the Petitioner, I have concluded that this individual must be included in the bargaining unit. As discussed above in connection with the

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<sup>10</sup> Brief of Petitioner at 20.



violations business account analyst and Port Authority accounts analyst, there is evidence of significant contact and interchange between the six violations department analysts, and the violations department CSRs whom the Petitioner seeks to include in the unit. The violations department analysts and violations department CSRs are part of the same department. Accordingly, I find that the exclusion of the Port Authority violations bus analyst would create a fractured unit, and that this individual shares such a strong community of interest with the employees in the proposed unit that the inclusion of this job classification is required.

Accordingly, I find that the Port Authority bus analyst must be included in the bargaining unit.

#### **Port Authority Violations Collections Analyst**

Cantos testified that the Port Authority violations collections analyst, also referred to as the Port Authority violations analyst, prepares the documentation to support legal proceedings against violators, including screen prints of violations over five years old or over \$1,000, and attends court proceedings. As discussed above, all violations department analysts assist the violations department CSRs in their work.

The Petitioner argues<sup>11</sup> that the Port Authority violations analyst is a manager, because he or she assists Port Authority counsel in preparing for litigation, by researching and compiling information. According to the Employer's official job description, the Port Authority violations analyst serves as an expert witness in court. In addition, the Port Authority violations analyst is more highly paid than employees in the unit the Petitioner seeks to represent. However, these facts do not establish that the Port Authority violations analyst formulates and effectuates management policies, is in an

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<sup>11</sup> Brief of Petitioner at 20-21.

executive-type position, or is closely aligned with management as a true representative of management. *General Dynamics*, 213 NLRB at 857.

In the absence of evidence establishing that the Port Authority violations analyst is a manager as alleged by the Petitioner, I have concluded that this individual must be included in the bargaining unit. As discussed above in connection with the violations business account analyst, Port Authority accounts analyst and Port Authority violations bus analyst, there is evidence of significant contact and interchange between the six violations department analysts, and the violations department CSRs whom the Petitioner seeks to include in the unit. The violations department analysts and violations department CSRs are part of the same department. Accordingly, I find that the exclusion of the Port Authority violations analyst would create a fractured unit, and that this individual shares such a strong community of interest with the employees in the proposed unit that the inclusion of this job classification is required.

### **Generic Violations Analysts**

The record reflects that the generic violations analysts receive escalated calls from CSRs in the violations department, act as liaisons with the toll authorities on complicated violations issues, assist in reviewing the integrity of violation notices created by the mail house, and run warning reports. In addition, they assist CSRs in the department with the violations correspondence backlog.

The Petitioner argues that the generic violations analysts are managers, largely on the grounds that they exercise independent judgment.<sup>12</sup> In addition, the Petitioner relies on the generic violations analysts' relatively high rate of pay, and the fact that the official

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<sup>12</sup> Brief of Petitioner at 21.

job description states that an “Associate or Bachelor Degree in Business Management or equivalent work experience [is] preferred.” The record reflects that neither generic violations analyst has a degree.

The record fails to establish that the generic violations analysts formulate and effectuate management policies, are in executive-type positions, or are closely aligned with management as true representatives of management. *General Dynamics*, 213 NLRB at 857.

In the absence of evidence establishing that the generic violations analysts are managers as alleged by the Petitioner, I have concluded that these individuals must be included in the bargaining unit. As discussed above in connection with the violations business account analyst, Port Authority accounts analyst, Port Authority violations bus analyst and Port Authority violations analyst, there is evidence of significant contact and interchange between the six violations department analysts, and the violations department CSRs whom the Petitioner seeks to include in the unit. The violations department analysts and violations department CSRs are part of the same department. Accordingly, I find that the exclusion of the generic violations analysts would create a fractured unit, and that these individuals share such a strong community of interest with the employees in the proposed unit that the inclusion of this job classification is required.

### **Junior Reciprocity Analysts**

During the hearing, the Petitioner took the position that junior reciprocity analysts lack a community of interest with the petitioned-for unit. In its brief, the Petitioner argues that the junior reciprocity analysts are managers or professionals.<sup>13</sup> Although the official job description for the junior reciprocity analysts emphasizes their report-

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<sup>13</sup> Brief of Petitioner at 27.

production responsibilities, it also indicates that the junior reciprocity analyst acts as a liaison with the toll authorities, which is the factor that Petitioner emphasizes. In addition, the Petitioner emphasizes that the junior reciprocity analysts participate in certain weekly conference calls. However, the record does not reveal the specific role played by the junior reciprocity analysts in these conference calls. I find that the record is insufficient to establish that the junior reciprocity analysts formulate and effectuate management policies, are in executive-type positions, or are closely aligned with management as true representatives of management. *General Dynamics*, 213 NLRB at 857. The record also fails to establish that junior reciprocity analysts are professional employees within the meaning of Section 2(12) of the Act.

The junior reciprocity analysts are the only job classification in the finance department which the Petitioner seeks to exclude. However, the record does not establish that the junior reciprocity analysts have sufficiently distinct interests from other finance department employees to justify excluding them from the bargaining unit. Although the senior reciprocity analysts fill in for the junior reciprocity analysts when they are absent, Cantos believed that there had been cross-training within the finance department to cover this type of work. It appears that some of the other finance department employees are equally specialized, such as the deposit coordinators. When they are absent, other deposit coordinators fill in for them. Although the junior reciprocity analysts have a higher pay scale than other employees in the finance department, their pay range overlaps with that of the payroll coordinator, whom the parties agreed to include in the bargaining unit. The top of the pay range for the payroll coordinators is \$52,500. The bottom of the pay range for the junior reciprocity analysts is \$47,700. Unfortunately, the record does not disclose

the specific salaries earned by the employees in these job classifications. Based on the limited information available, the record does not justify the conclusion that the junior reciprocity analysts have sufficiently distinct interests from other finance department employees to justify their exclusion from the bargaining unit. I find that the exclusion of the junior reciprocity analysts would create a fractured unit, and that these individuals share such a strong community of interest with the employees in the proposed unit that the inclusion of this job classification is required.

**Junior Quality Assurance Analyst and Senior Quality Assurance Analyst**

In its brief, the Petitioner asserts that the junior quality assurance analyst and senior quality assurance analyst are managerial, professional and supervisory employees.<sup>14</sup> The record evidence is insufficient to support the Petitioner's claims, as with the other analysts. However, there is sufficient evidence to conclude that the junior and senior quality assurance analysts need not be included in the unit, on community of interest grounds. The junior and senior quality assurance analysts are in a completely separate department from that of any other employees in the petitioned-for unit, and they are separately supervised. Their pay scales are higher than those of most employees in the petitioned-for bargaining unit. There is no evidence of permanent or temporary interchange. Moreover, Cantos testified that the junior and senior quality assurance analysts "are supposed to have only minimal contact with the CSRs in the walk-in centers." In all of the departments that the junior quality assurance analysts evaluate, they can listen in, observe, request and review documentation, but "it's not an exchange of dialogue." Rather, they are there to "make sure there is third-party oversight as to the integrity of a given process," and they look for deficiencies, vulnerabilities, and mistakes.

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<sup>14</sup> Brief of Petitioner at 12.

Under these circumstances, the record fails to establish that the junior and senior quality assurance analysts share such an overwhelming community of interest with the employees in the petitioned-for bargaining unit that their inclusion in the unit is required. I will therefore exclude them from the bargaining unit.

**Information Technology (“IT”) Department: Junior Systems Analysts, Vector System Test Administrators and Performance Monitoring Analysts**

In its brief, the Petitioner argues that the junior systems analyst and vector system test administrator are managers and professionals.<sup>15</sup> Although there is insufficient evidence to support the Petitioner’s claims, I will exclude these job classifications, and the performance monitoring analysts, on community of interest grounds. These job classifications are in a separate department from that of any of the employees in the petitioned-for bargaining unit, and they are separately supervised. There is no evidence of permanent or temporary interchange between the IT department employees and the employees in the bargaining unit sought by the Petitioner, apart from Cantos’ vague assertion regarding “CSRs throughout the program” performing the same work as the vector systems test administrator. The salary ranges for the junior systems analyst and performance monitoring analysts are higher than those of most employees in the petitioned-for unit; the record does not reveal the salary ranges for the vector system test administrators.

The record reflects that the junior systems analysts are required to have technical expertise in areas such as query technique, system reporting applications, Visual Basic, and Actuate. The vector system test administrator defines test scripts and test modules. Unlike the employees in the petitioned-for bargaining unit, the junior systems analysts

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<sup>15</sup> Brief of Petitioner at 24-25.

and vector system test administrator appear to be technical, systems-oriented employees. The record does not disclose the duties or responsibilities of the performance monitoring analyst, but there is certainly no evidence that they resemble those of the employees in the petitioned-for unit.

In sum, the record fails to establish that the junior systems analyst, vector system test administrator or performance monitoring analyst, all in the IT department, share such a strong community of interest with the employees in the petitioned-for bargaining unit that their inclusion in the unit is required. I will therefore exclude them from the bargaining unit.

#### **Junior LAN Administrator**

The Petitioner argues that the junior LAN administrator is a manager, because the Employer's official job description states that he is "responsible for supporting the design, acquisition, installation and maintenance of LANs, as well as performing LAN administration functions, including troubleshooting LAN related problems. In addition, [he] will specify, order and implement PC and LAN related equipment and support our telecommunications system." While this language taken from the official job description could have been the starting point for developing a record on the issue of whether the junior LAN administrator is a manager, the job description alone is insufficient to establish his managerial status.

The Petitioner further argues that the junior LAN administrator is a professional, because he is required to have IT related certifications and experience.<sup>16</sup> However, this evidence does not establish that the junior LAN administrator is engaged in work "requiring knowledge of an advanced type in a field of science or learning customarily

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<sup>16</sup> Brief of Employer at 26.

acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital,” as required by Section 2(12) of the Act.

However, the junior LAN administrator should be excluded from the bargaining unit on community of interest grounds. He is in a separate department from the employees in the petitioned-for bargaining unit, and is separately supervised. There is no evidence of temporary or permanent interchange between the junior LAN administrator and the employees in the petitioned-for unit, and his rate of pay is significantly higher than theirs.

Moreover, the nature of the work performed by the junior LAN administrator requires a completely different skill set from those of the employees the Petitioner seeks to represent. Cantos testified that the junior LAN administrator maintains the computer network, sets up employees’ computers, maintains the hardware, installs applications, and, for those employees who have e-mail access, makes sure employees’ e-mail works. He has inventory control responsibilities with respect to the equipment in the computer room and troubleshoots problems with unspecified “technicians.” As noted above, he is required to have IT related certifications.

Accordingly, the record evidence does not establish that the junior LAN administrator shares such a strong community of interest with the employees in the petitioned-for bargaining unit that his inclusion in the unit is required. I will therefore exclude him from the bargaining unit.

#### **Junior Business Analyst**

The Petitioner asserts that the junior business analyst is a manager, but the record is not sufficiently well developed to support this assertion. Rather, the exclusion of the



junior business analyst from the unit on community of interest grounds is warranted on the facts that he is in a separate department from the employees in the petitioned-for unit, reports directly to senior management, and earns a significantly higher salary than most employees in the petitioned-for unit. There is no evidence of permanent or temporary interchange between the junior business analyst and the employees in the petitioned-for bargaining unit. Accordingly, I find that there is an insufficient community of interest between the junior business analyst to require his inclusion in the bargaining unit.

### **CONCLUSIONS AND FINDINGS**

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that the Employer, a domestic corporation, has a principal office and place of business located at 1 Edgewater Plaza, Staten Island, New York, herein called the Staten Island facility, and is engaged in the business of providing transportation management and toll collection for the New York State Thruway Authority. During the past year, which period is representative of its annual operations generally, the Employer, in the course and conduct of its business operations, provided services valued in excess of \$50,000 to the New York State Thruway Authority, an entity engaged in interstate commerce.

Based on the stipulations of the parties, and on the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated that Communications Workers of America is a labor organization within the meaning of Section 2(5) of the Act, in that it is an

organization in which employees participate, and which exists, in whole or in part, for the purpose of dealing with employers concerning wages, hours and other conditions of employment. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The following employees of the Employer constitute an appropriate bargaining unit:

All full-time and regular part-time customer service representatives (“CSRs”) and clerks employed by the Employer in its tag processing department, violations department and correspondence department, all CSRs employed in the Employer’s Staten Island walk-in center and the Staten Island call center, receptionists and facilities clerks employed in the facilities department, monitor clerks employed at the Staten Island call center, refund coordinators, NSF coordinators, charge back collections coordinators, reconciliation coordinators, deposit coordinators, accounts payable coordinators, payroll coordinators, junior reciprocity analysts, work leaders, correspondence department analysts, PA class mismatch transaction analysts, Port Authority violations bus analysts, Port Authority violations collections analysts, generic violations analysts, violations business account analysts, Port Authority accounts analysts employed by the Employer at its facility located at 1 Edgewater Plaza, Staten Island, New York, herein called the Staten Island facility, but **EXCLUDING** all other employees, managers, executives, supervisors as defined in Section 2(11) of the Act, confidential employees, guards, trainers, junior systems analysts, performance monitoring analysts, Vector system test administrators, junior LAN administrators, junior and senior quality assurance analysts, junior business analysts, workforce analysts, senior systems analysts, report production leads, senior LAN administrators, deposit coordinators and deposit clerks employed at the Employer’s facilities located at Yonkers, Queens, Spring Valley, Albany, Grand Island and Syracuse, New York, and all other employees employed by the Employer in locations other than Staten Island.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by Communications Workers of America.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should

have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor, Brooklyn, New York 11201 on or before **May 8, 2009**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **NOTICES OF ELECTION**

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **May 15, 2009**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed. The request for review may not be filed by facsimile.

Dated: May 1, 2009, Brooklyn, New York.

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Alvin P. Blyer  
Regional Director, Region 29  
National Labor Relations Board  
Two MetroTech Center, 5<sup>th</sup> Floor  
Brooklyn, New York 11201

